

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:12-CV-00610-F

C O P Y

CITY GRILL HOSPITALITY GROUP, INC., )  
)  
Plaintiff, )  
)  
vs. )  
) D E P O S I T I O N  
NATIONWIDE MUTUAL INSURANCE COMPANY, )  
)  
Defendant. )  
- - - - - )

-----  
HUNTER B. LACY, CFI  
-----

One West Fourth Street  
Winston-Salem, North Carolina

Wednesday, August 21, 2013  
10:03 o'clock a.m.

-----  
Atlantic Professional Reporters  
Winston-Salem, NC 27116-1672

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## NOTES

[illegible]

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## 1 STIPULATIONS

2 Pursuant to notice and/or consent of the  
3 parties, the deposition hereon captioned was  
4 conducted at the time and location indicated before  
5 Cassandra J. Stiles, Notary Public in and for the  
6 County of Forsyth, State of North Carolina at Large.

7 The deposition was conducted for use in  
8 accordance with and pursuant to the applicable rules  
9 or by order of any court of competent jurisdiction.

10 Reading and signing of the testimony was  
11 requested prior to the filing of same for use as  
12 permitted by applicable rule(s).

1                   The witness, HUNTER B. LACY, CFI, being  
2   first duly sworn to state the truth, the whole truth  
3   and nothing but the truth, testified as follows:

4                   (10:03 o'clock a.m.)

5                   EXAMINATION

6   BY MR. WIGGINS:

7           Q.    Good morning again, Mr. Lacy.

8           A.    Good morning.

9           Q.    You and I just met again this morning --  
10   Richard Wiggins -- I think maybe we met back in maybe  
11   November of 2012.

12          A.    Briefly, yes, sir.

13          Q.    Very briefly at the Miami Subs Restaurant  
14   in Fayetteville.

15          A.    Yes, sir.

16          Q.    Do you recall that?

17          A.    Yes, sir.

18          Q.    And you're here today for your expert  
19   deposition.

20                    You understand that?

21          A.    Yes, sir.

22          Q.    And you've had your deposition taken many  
23   times.

24          A.    Yes, sir.

25          Q.    You know the drill.

1 A. Yes, sir.

2 Q. And the only thing I would say is, again,  
3 remind you that if you're responding to a question,  
4 just -- don't just shake your head pos -- yes, or  
5 negatively, no, and answer ---

6 A. --- I understand.

7 Q. And if I ask a -- ask you a question that  
8 you do not understand, please ask me to repeat it and  
9 make myself more clear, and I'll be more than happy  
10 to try to do that, because I, as most lawyers, do ask  
11 questions sometimes that has -- is unintelligible.

12 A. Okay.

13 Q. Again, state your full name for the  
14 record, please, sir.

15 A. Hunter B. Lacy, L-a-c-y, and I go by the  
16 nickname of Terry.

17 Q. How did you come by the nickname, Terry?

18 A. In the mid fifties, a secretary at the  
19 private school where my father worked basically  
20 picked it, and it stuck for, you know, 58 -- well, 57  
21 years or so.

22 Q. Well, very good. I was wondering, because  
23 it had nothing to do with Hunter.

24 A. No, sir. Everybody in my -- all the males  
25 in my family have nicknames.

1 Q. I see. I see.

2 Just give me a brief sketch of your  
3 background, your work background, your educational  
4 background?

5 A. In May of 1978 I graduated from  
6 Gardner-Webb College, then, now University.

7 In August of 1978 I went to work for the  
8 Shelby, North Carolina Fire Department as a  
9 firefighter.

10 In November of 1978 I was promoted to fire  
11 inspector and ---

12 Q. --- Let me ask you something. I've  
13 wondered about this.

14 What is the difference between a fire  
15 inspector and a fire investigator?

16 A. In small departments, the fire inspector  
17 does everything -- fire prevention inspections,  
18 public education and fire investigation.

19 Q. He does it all?

20 A. Yes, sir.

21 Q. Okay.

22 A. In larger departments -- Charlotte, for  
23 example -- you have fire inspectors, fire educators,  
24 fire investigators, so each one does the one item.  
25 Fire inspectors do inspections, education --



1 educators do the education activities, investigators  
2 do investigations.

3 In smaller departments, you typically --  
4 one hat does all.

5 Q. I understand.

6 A. So anyway, November of '78 I become a fire  
7 inspector in Shelby.

8 In September of 1979 I leave Shelby and go  
9 to Charlotte as a fire inspector, but I -- my  
10 situation was a little different.

11 I went in the door in Charlotte doing  
12 about 50 percent fire inspection, 50 percent fire  
13 investigation.

14 Novem -- I'm sorry. June of 1981 I become  
15 an investigator, and basically since June of 1981 all  
16 I have done is investigative activities.

17 Q. Okay.

18 A. In November of 1992 -- I'm sorry. June --  
19 I don't know why I'm hung on November.

20 June of 1992 I left the Charlotte Fire  
21 Department and went to work for Royal Insurance  
22 Company as a fire investigator, and later as the  
23 manager of the fire investigations group.

24 In 2003, the parent company of Royal  
25 decided to exit the United States insurance market,

1 so in September of 2004 I was laid off.

2 Immediately transitioned to a company that  
3 was then known as MJM Investigations, again, doing  
4 fire investigation. Stayed there until 2007.

5 Went to a company called EFI Global doing  
6 fire investigations.

7 In July of 2008 I went to Valentine  
8 Associates doing fire investigations.

9 And March -- I'm sorry -- May of 2009 went  
10 to work for Donan Engineering, stayed there until  
11 July of this year, and I'm in the process of forming  
12 my own company.

13 Q. What is the name of your company that  
14 you're forming? Have you named it?

15 A. Paperwork is not at the North Carolina  
16 Secretary of State's, but I believe it will be called  
17 Investigative Resources Global.

18 Q. Investigative Resources Global?

19 A. Yes, sir.

20 Q. I noticed in your -- is this the latest CV  
21 that I have, your -- that's attached to your federal  
22 expert report?

23 Is that the last, most recent one?

24 A. At the time of the report -- and to be  
25 very candid with you, I've not -- I've not updated it

1 since then, so yes, that probably is the most recent.

2 Q. Okay.

3 A. But that would have been in June or July  
4 of this year.

5 Q. Okay.

6 A. So it's fairly accurate. It wouldn't have  
7 been July. It probably would have been May or June,  
8 but it's fairly accurate. I just forget the date on  
9 the report.

10 Q. I noticed from your resume, or CV, that  
11 you've testified in a good many lawsuits over the  
12 course of your career.

13 A. Yes, sir.

14 Q. Both civil cases and in criminal cases.

15 A. Yes, sir.

16 Q. I noticed you've testified in -- you've  
17 given expert testimony in about 25 criminal cases  
18 over the course of your career.

19 A. Yes. Well, I don't know the exact number,  
20 but yes, sir, a fair number of criminal cases.

21 Q. And that goes back to, what, in the 1980s?

22 A. 1982 would have been when Judge Forest  
23 Ferrell qualified me as an expert on a 1981 fire.

24 Q. And do you remember the name of that case?

25 A. State of North Carolina versus Douglas

1 Hunt.

2 Q. Do you remember State of North Carolina  
3 versus Vernon Damion Williamson?

4 A. Yes, sir.

5 Q. That was in 1985 also.

6 A. Yes, sir. But Hunt was before Williamson.

7 Q. That was the first one?

8 A. No, sir.

9 Q. I'm sorry. Hunt was....

10 A. If you're going -- if you have my CV in  
11 front of you ---

12 Q. --- I do.

13 A. --- Look right ---

14 Q. --- I do.

15 A. Look right below court testimony, you'll  
16 see a sentence or two.

17 Q. All right. I see. I see. I've got it.

18 That was UNC versus Douglas Hunt. State  
19 of North Carolina versus Douglas Hunt.

20 A. That was when I was first qualified as an  
21 expert, in the Douglas Hunt case.

22 Q. Okay.

23 A. Then Vernon Damion Williamson was a little  
24 bit later.

25 Q. And in the testimony that you've given in

1 the criminal cases, has it always been on behalf of  
2 the state, or has it been on both sides of the fence,  
3 both ---

4 A. --- On behalf of the state.

5 Q. Okay, and these were all arson cases, I  
6 suppose?

7 A. Yes, sir.

8 Q. And you did the investigation, the fire  
9 investigation, on behalf of the state in those cases?

10 A. All with the exception of one.

11 Q. Okay.

12 A. There is a Haywood County case -- and  
13 without looking at it I don't remember the name of  
14 the defendant -- but there is a Haywood County, North  
15 Carolina, case where I did the investigation for the  
16 insurance company, and the state chose to subpoena me  
17 as a witness in addition to the government  
18 investigators as to the origin and cause of the fire.

19 It's listed on there, I would say,  
20 sometime in the late '90s or early 2000s.

21 Q. And then you've also listed some civil  
22 cases in which you've given expert testimony.

23 A. Yes, sir.

24 Q. And the first one you have listed is Helen  
25 Threatt versus H.E. Hiers Estate?

1 A. Yes, sir.

2 Q. And was that a cause and origin case?

3 A. It was. And that investigation I  
4 conducted as a employee of the Charlotte Fire  
5 Department and was subpoenaed by the plaintiff to  
6 testify for them.

7 Q. And then the next one you've listed is  
8 Harrington versus A.G. Boone Company. That was '87.  
9 Do you recall that case?

10 A. Yes, sir.

11 Q. Cause and effect?

12 A. Same scenario. Accidental fire. I worked  
13 it for the Charlotte Fire Department, subpoenaed by  
14 the plaintiff.

15 Q. And you were at that time a fire  
16 investigator ---

17 A. --- Yes, sir.

18 Q. --- Not a fire....

19 A. Inspector.

20 Q. Inspector.

21 A. Correct.

22 Q. And then State of -- then you got one  
23 listed, State of North Carolina versus Eugene White.

24 Was that a civil case?

25 A. No, sir.

1 Q. That was a criminal case?

2 A. No, sir. If you see in the docket number,  
3 if it's CR it's criminal, if it's CV it's civil.

4 Q. I see, criminal. I got you.

5 And they just got listed in a separate  
6 place here.

7 A. By the way, those are listed  
8 chronologically, sir.

9 Q. I got you. Okay.

10 Then Collingwood versus Wood versus G.E.  
11 Real Estate Equities, Superior Court. That's a CV  
12 case.

13 A. Again, accid ---

14 Q. --- Cause and origin?

15 A. Accidental fire, worked it for the  
16 Charlotte Fire Department, subpoenaed by the  
17 Plaintiff.

18 Q. And then Commonwealth of Massachusetts  
19 versus George M. Ploude, P-l-o-u-d-e.

20 That's a case ---

21 A. -- That is a criminal case.

22 I worked that fire for Royal Insurance,  
23 and the district attorney's office in Massachusetts  
24 subpoenaed me to testify for them.

25 Q. And then Sharon Logan versus Carlot --

1 Charlotte Housing Authority, civil case, and I guess  
2 that was a cause and origin case also?

3 A. Yes, sir.

4 Q. And you testified on behalf of?

5 A. The defendant.

6 Q. And the last one you have listed here is  
7 Kevin Wilson versus State Farm, and that, I guess,  
8 was a cause and origin also?

9 A. Yes, sir. I was retained by State Farm in  
10 Roanoke, Virginia, to do the origin and cause of a  
11 fire and was -- subsequently testified for them.

12 Q. On behalf of State Farm?

13 A. At deposition and at trial for State Farm.

14 Q. Okay, other than the ones that you've  
15 listed on your CV, do any other cases come to mind in  
16 which you've testified as an expert ---

17 A. --- No, sir.

18 Q. --- As to fire and origin?

19 A. I'm -- I'm fairly certain that is a full  
20 list.

21 Q. Okay.

22 A. And the reason I say that is because it's  
23 something I've maintained through the years.

24 Q. Have you ever been disqualified as an  
25 expert in any case in which you've been called to



1     testify?

2             A.     No, sir.

3             Q.     And every court that you've been asked to  
4     testify in, you have qualified as an expert witness,  
5     I take it?

6             A.     Every time I have been submitted, I have  
7     been qualified ---

8             Q.     --- Okay.

9             A.     --- As an expert.

10             And the only reason I say that is I have  
11     probably testified in 200 matters as a fact witness.

12             Q.     Okay.

13             A.     Approximately 200.

14             Q.     And that would not be as an expert fire  
15     and origin investigator, I take it?

16             A.     The 200 times would have been during my  
17     career as a fire investigator, but for whatever  
18     reason, I was testifying as a fact witness and not an  
19     expert.

20             Q.     I understand.

21             Since you've been involved with Donan, was  
22     Nationwide a client of Donan on a regular basis?

23                     MS. DALY:   Objection to form.

24                     MR. WIGGINS:   Well, let me strike  
25     that.

1 Q. (Mr. Wiggins) Was it a regular client of  
2 Donan Engineering?

3 MS. DALY: Objection to form.

4 THE WITNESS: I'm going to be honest  
5 with you. I don't know, simply because I did not,  
6 and today do not know how to calculate how many  
7 referrals they give the company.

8 Donan probably has 300 professional  
9 employees east of the Mississippi. They're more  
10 prevalent -- they've got one or two offices west, but  
11 not much.

12 I have no idea how much work Donan got  
13 from Nationwide.

14 MR. WIGGINS: Okay, let me ask it  
15 this way.

16 Q. (Mr. Wiggins) How many cases do you  
17 recall working on in which Nationwide was the  
18 insurer?

19 A. I never counted. I probably did three to  
20 four a month.

21 Q. And would that have been as a cause and  
22 origin investigator?

23 A. Yes, sir.

24 Q. And would all of these cases have been in  
25 instances where an adjuster or someone else

1 associated with Nationwide Insurance Company thought  
2 there may be some question as to the cause and  
3 origin?

4 MS. DALY: Objection to form.

5 THE WITNESS: In all cases they  
6 retained me to identify the origin and cause of the  
7 fire, and I would believe that on most all of those  
8 occasions the adjuster did not know the origin and  
9 cause of the fire when he called in the referral.  
10 And the dollar value was such that they wanted to  
11 know the origin and cause of the fire.

12 MR. WIGGINS: Okay.

13 THE WITNESS: I don't -- I mean, I  
14 -- yeah, I'll leave it at that.

15 Q. (Mr. Wiggins) And would it be fair to say  
16 that the cases that you worked on for Nationwide were  
17 cases in which there may have been some question  
18 about the cause and origin?

19 A. No ---

20 MS. DALY: --- Objection. Asked and  
21 answered.

22 MR. WIGGINS: Pardon?

23 THE WITNESS: No, sir.

24 Q. (Mr. Wiggins) Explain that to me, then,  
25 the difference.

1                   If it would not be something they would --  
2   you said they wanted to know the cause and origin of  
3   the fire ---

4           A.     --- Well ---

5           Q.     --- Because of the dollar amount.

6           A.     Okay, maybe I misunderstood ---

7                   MS. DALY:   --- Objection.  
8   Mischaracterization of his testimony.

9                   THE WITNESS:  Maybe I misunderstood  
10   your question.

11                   When Nation -- I don't recall Nationwide  
12   ever calling me, telling me they think they know the  
13   cause of the fire and they want me to investigate it.

14                   MR. WIGGINS:  Okay.

15                   THE WITNESS:  What I almost always  
16   got was I've got a fire, I need you to look at it.

17                   MR. WIGGINS:  Okay.

18                   THE WITNESS:  And when I would see  
19   them at the scene, or wherever, they would basically  
20   say I don't know what happened.

21                   The adjusters are very hesitant to jump to  
22   conclusions.  They want evidence.

23           Q.     (Mr. Wiggins)  As a fire and origin  
24   investi -- let me strike that again.  Let me ask you  
25   this.

1                   Have you done any investigations on behalf  
2 of Womble Carlyle?

3           A.     No, sir.

4           Q.     Has the methodology of fire and origin  
5 investigation changed since you got into the business  
6 in any particular significant way?

7                   MS. DALY:  Objection to form.

8                   THE WITNESS:  I don't know that I  
9 have changed how I process a fire scene.

10                   What I have seen change is the fuels  
11 involved in the fire, so that necessitated some  
12 changes.

13                   As the recommended methodology has been  
14 documented in books and articles, I realized I was  
15 doing that in the '80s.

16                   MR. WIGGINS:  Uh-huh.

17                   THE WITNESS:  It just wasn't called  
18 that.

19                   What is now referred to as a scientific  
20 method, I used prior to 1993 when it was -- when it  
21 came out of the United States Supreme Court.  But it  
22 wasn't written anywhere then.

23                   But when I saw it, I was kind of like  
24 we've been doing that.

25           Q.     (Mr. Wiggins)  All right, that's what I

1 was getting at.

2 I've noticed that over the years that some  
3 courts back in the early '80s were beginning not to  
4 qualify C&A investigators as experts because they  
5 were taking great liberties with their testimony.

6 Do you recall anything like that?

7 MS. DALY: Objection to form.

8 THE WITNESS: No, sir.

9 Q. (Mr. Wiggins) Okay, tell me about NFPA.  
10 You're familiar with that?

11 A. Yes, sir.

12 Q. How does it fit into what cause and origin  
13 investigators do?

14 How does it relate to what you do?

15 MS. DALY: Objection to form.

16 THE WITNESS: NFPA is the National  
17 Fire Protection Association, and while the title is  
18 national, it is international and it is the sole  
19 organization of its type in the world.

20 They publish 350, 375 -- I haven't counted  
21 them lately -- documents that comprise what is called  
22 the National Fire Codes, and for the most part those  
23 are the fire codes that are used throughout the  
24 United States.

25 They publish two documents that are

1 directly connected with fire investigation, and then  
2 a large number that are indirectly.

3 One of the documents is NFPA 921, which is  
4 on the investigation of fires and explosions, and it  
5 is a guideline -- in their own terminology, it is a  
6 guide in their own terminology for the investigation  
7 of fires.

8 NFPA also publishes NFPA 1033,  
9 Professional Qualifications of Fire Investigator, and  
10 it de -- it's essentially a job description for fire  
11 investigators.

12 I was a member of the 921 committee in the  
13 late -- mid to late '90s to 2004, and I'm currently a  
14 member of the NFPA 1033 committee.

15 MR. WIGGINS: Okay.

16 THE WITNESS: Go ahead.

17 MR. WIGGINS: I'm sorry.

18 Q. (Mr. Wiggins) Do they have local chapters  
19 of that?

20 A. No, sir.

21 Q. It's just a national organization?

22 A. Yes, sir.

23 Q. And it has membership?

24 A. It does.

25 Q. And you are a member of that organization?

1 A. I am.

2 Q. And have you served as an officer of the  
3 NFPA?

4 A. I have not.

5 Q. I take it there are officers and directors  
6 of that organization.

7 A. Yes, sir.

8 Q. But you've served on committees of that  
9 organization?

10 A. Yes, sir.

11 Q. What committees have you served on during  
12 the course of your career?

13 A. The NFPA 921 committee and the NFPA 1033  
14 committee.

15 Q. And do you subscribe to that as being  
16 somewhat of the standard that most and all cause and  
17 origin investigators should adhere to?

18 MS. DALY: Objection to form.

19 THE WITNESS: I agree that it --  
20 that 9 -- NFPA 921 details a preferred methodology.

21 Q. (Mr. Wiggins) Okay, and what I'm asking,  
22 Mr. Lacy, is if an investigator falls below that  
23 standard, would he be qualified as a qualified cause  
24 and origin investigator?

25 A. Sure.



1 MS. DALY: Objection to form.

2 Q. (Mr. Wiggins) He would be?

3 A. Sure.

4 Q. And do any courts, to your knowledge, use  
5 that NFPA 921 standard as any kind of a benchmark for  
6 qualifying cause and origin experts?

7 MS. DALY: Objection to form.

8 THE WITNESS: No, sir.

9 Q. (Mr. Wiggins) Have you ever been asked by  
10 a court if you were a member of the NFPA?

11 A. I honestly do not believe I've ever been  
12 asked that question.

13 Q. Is there any other standards that are out  
14 there that you are aware of in addition to the NFPA  
15 Section 921 that prescribes -- proscribes methods and  
16 means of cause and origin investigations?

17 A. No, sir.

18 Q. I noticed in your reports that you preface  
19 your reports by saying that it was done in accordance  
20 with 921.

21 A. Yes, sir.

22 Q. And so you do -- you, yourself, believe  
23 that to be the standard in which you would conduct  
24 your investigations?

25 A. Yes, sir.

1 Q. Have you taught any courses on behalf of  
2 the NFPA?

3 A. I believe years ago I taught several NFPA  
4 921 courses. They were not sponsored solely by the  
5 NFPA. The NFPA was a partner.

6 Q. Have you written any articles and  
7 submitted them to the NFPA for publication?

8 A. No, sir.

9 Q. There is a state -- is there a state  
10 standard or -- strike that.

11 Is there any kind of a state qualification  
12 in North Carolina for fire -- for cause and origin  
13 investigators?

14 A. Yes, sir. The North Carolina State Fire &  
15 Rescue Commission offers a certified fire  
16 investigator program, and that's the only one -- I  
17 mean, that's the only such program that I'm aware of  
18 in North Carolina.

19 Q. And do you have to be licensed in North  
20 Carolina to call yourself a qualified fire and origin  
21 investigator?

22 A. Well -- no, sir, you don't.

23 Q. Do you think they should be?

24 MS. DALY: Objection.

25 THE WITNESS: I think the

1 qualification issue should be left up to the courts.

2 Certification can be handled by an agency  
3 such as the fire and rescue commission, but actual  
4 qualifications -- because I am a certified fire  
5 investigator, but that doesn't mean that my comfort  
6 level with investigating the fire on a aircraft  
7 carrier is as high as it would be on a routine house  
8 fire.

9 When you certify fire investigators,  
10 you're not certifying them by types of fires. You're  
11 certifying them by fires.

12 As far as the actual qualifications of an  
13 individual investigator, I don't think you can  
14 determine that until you know what type of fire it  
15 is. That's the qualifications. And you used the  
16 word, qualifications.

17 If you're going to certify investigators,  
18 yeah, that's fine to certify as a fire investigator.

19 Q. (Mr. Wiggins) And you are a certified  
20 fire investigator?

21 A. Yes, sir.

22 Q. And so that kind of brings us to why you  
23 are here today, because you are a qualified fire  
24 cause and origin investigator, and you were called to  
25 investigate this fire, on behalf of Nationwide, at

1 Miami Subs Restaurant in Fayetteville, North  
2 Carolina, on or about February 25th, 2012. Is that  
3 correct?

4 A. I believe ---

5 MS. DALY: --- Objection to form.

6 Q. (Mr. Wiggins) On or about.

7 A. I believe it was January 25th.

8 Q. 25th, 2012?

9 A. Yes, sir.

10 Q. And who retained you in this case? Was it  
11 Nationwide?

12 A. Zak Gurley is an adjuster with Nationwide.  
13 Z-a-k G-u-r-l-e-y.

14 And on January 25th he called in the  
15 assignment. It was given to me. I called him on the  
16 25th, left a voice mail, and I believe I called Jimmy  
17 on the 25th and left a voice mail.

18 Q. You're talking about Jimmy Diamantopoulos?

19 A. Yes, sir.

20 Q. And what did you tell Jimmy when you  
21 called him?

22 A. I told him who I was by name and phone  
23 number. Told him I'd been retained to investigate  
24 the fire at Miami Subs and needed him to call me to  
25 make arrangements to meet him there.

1 Q. And what was -- when you talked to Mr.  
2 Gurley, do you recall what he told you he wanted you  
3 to do?

4 What was the scope of your investigation?

5 A. The first thing he told me was that the  
6 fire had been reassigned and was no longer his. But  
7 otherwise, the conversation evolved around origin and  
8 cause.

9 Q. And when you said origin and cause, that  
10 -- tell me what that kind of assignment would  
11 involve?

12 A. Identify where the fire originated and  
13 identify the ignition source for the fire and  
14 identify the classification of the fire.

15 Q. Okay. We talk about cause.

16 Is cause and ignition the same, synonymous  
17 with each other, or is it different?

18 A. Different.

19 Q. Okay, how is it different?

20 A. Well, cause is the sequence of events that  
21 brings the ignition source in contact with the fuel  
22 source. A person leaving food on a stove would be a  
23 cause.

24 Q. Okay.

25 A. The food on the stove would be the fuel.

1 The person failing to cut off the stove would be --  
2 the ignition source would be the -- the burner on the  
3 stove, and the person failed to cut it of.

4 Q. And the fuel source, then, would be what  
5 was on the stove that got burned?

6 A. No, sir. The fuel, yes, sir. Yes, sir.

7 Q. That would be the fuel.

8 And so your duties as a qualified fire and  
9 -- fire origin and cause investigator was to make  
10 those determinations at the Miami Subs Restaurant.

11 You understood that when you were called?

12 A. Yes, sir.

13 Q. And you then called Jimmy.

14 And did you call anyone else or speak with  
15 anyone else other than those two persons ---

16 A. --- No, sir.

17 Q. --- Before you came down to Fayetteville?

18 A. No, sir.

19 Q. And so the 25th -- the 26th you did come  
20 to Fayetteville?

21 A. Yes, sir.

22 Q. And tell me what time you got there on  
23 that day?

24 A. I think it was approximately at nine a.m.

25 Q. Okay, and you had arranged with Jimmy to

1 meet you there on that date?

2 A. On the 26th, on my way to Fayetteville, I  
3 was able -- I got -- I was able to get up with Jimmy.  
4 I had not spoken to him. I left Charlotte on the  
5 26th not having spoken to Jimmy.

6 Q. Okay.

7 A. Got him on the phone on my way down.  
8 I also spoke with Fayetteville Fire  
9 Department, learned that the SBI was investigating.  
10 I called the supervisor of fire investigations,  
11 learned that Chad Royal was investigating, so I  
12 called Chad.

13 Q. Okay.

14 A. And basically, number one, are you -- are  
15 you finished with the scene, and he said he was. And  
16 then I ---

17 Q. --- He -- which one, now?

18 A. Chad.

19 Q. Chad said he was?

20 A. Chad Royal said he was -- he had completed  
21 his fire scene examination. He wanted to know what  
22 time I was going to get there. I told him, and he  
23 met me out there later.

24 Q. Okay. You seem to have known Chad prior  
25 to this time.

1 A. No, sir.

2 Q. You did not?

3 A. No, sir.

4 Q. Did you know other SBI agents in  
5 Fayetteville at that time?

6 A. I knew the supervisor -- his supervisor,  
7 Lee.

8 Q. Okay, did you know any other of the  
9 investigators from any of the departments, fire  
10 department, police department, who had come on the  
11 scene or had been on the scene in Fayetteville?

12 A. Of this fire?

13 Q. Yes, of this fire.

14 A. No, sir.

15 Q. And you were able to get hold of Jimmy and  
16 Jimmy agreed to meet you there.

17 A. Yes, sir.

18 Q. At about nine o'clock?

19 A. Yes, sir.

20 Q. And he did meet you there?

21 A. He did.

22 Q. And he let you in?

23 A. He did.

24 Q. And who was there when you arrived at the  
25 scene?



1 A. I believe just Jimmy.

2 Q. Okay, and no other investigator was there  
3 at that time?

4 A. No, sir.

5 Q. The fire had been suppressed?

6 A. Yes, sir.

7 Q. Completely suppressed.

8 Was there any smoldering embers or smoke  
9 or -- still visible at that time?

10 A. No, sir.

11 Q. And when you went in to the restaurant,  
12 did Jimmy stay there or did he leave?

13 A. He stayed for a little while, then left  
14 ---

15 Q. --- Okay.

16 A. --- Then came back.

17 Q. And did you have a conversation with Jimmy  
18 about what had happened or got his version of what  
19 happened?

20 A. Almost immediately after arriving, I  
21 introduced myself to him.

22 I use an aluminum clipboard to write on.  
23 I put it on the hood of my truck and interviewed him.

24 Q. And you told him that you were there on  
25 behalf of Nationwide Insurance Company, did you not?

1 MS. DALY: Objection to form.

2 THE WITNESS: I don't know that I  
3 repeated it when I met him on the scene, but I  
4 definitely told him that in the voice mail on the  
5 25th, and probably told him that in the telephone  
6 conversation on the 26th.

7 MR. WIGGINS: Okay.

8 THE WITNESS: I don't know that I  
9 told him again when I saw him in person.

10 Q. (Mr. Wiggins) And do you think he knew  
11 what the purpose of your being there was?

12 A. I am comfortable I explained it to him. I  
13 don't have any idea if he knew.

14 Q. Okay.

15 A. I mean, I'm just going to be very candid  
16 with you. I don't know that part.

17 Q. I will say that Jimmy is a Greek and he  
18 has an accent.

19 A. Yes, sir.

20 Q. And you learned that in speaking to Jimmy  
21 ---

22 A. --- Yes, sir.

23 Q. --- It's sort -- sometimes difficult to  
24 understand what he says. I understand that.

25 But he stayed there for a few minutes

1 after you arrived and he let you in?

2 A. Yes, sir.

3 Q. And you interviewed him there and took  
4 down a statement.

5 And do you have your notes with you today  
6 that you took?

7 MS. DALY: Mr. Wiggins, here are  
8 four files and his notes are on these files as well.

9 MR. WIGGINS: Can I read them?

10 MS. DALY: Yes. Everything is on  
11 here and all of the documents he produced in response  
12 to your subpoena, sir.

13 MR. WIGGINS: Okay.

14 MS. DALY: Can we go off the record?

15 MR. WIGGINS: Yeah.

16 (10:37-10:42 a.m. - recess)

17 MR. WIGGINS: Back on the record.

18 Q. (Mr. Wiggins) Was there any -- was there  
19 any information, Mr. Lacy, that you developed prior  
20 to coming to Fayetteville other than what you've told  
21 me about?

22 A. On the morning of the 26th, Special Agent  
23 Chad Royal of the SBI told me he had not determined  
24 the cause of the fire.

25 Q. And was that telephonically ---

1 A. --- It was.

2 Q. --- He told you that?

3 A. It was.

4 Q. Anybody else that you talked to to get  
5 some background other than Mr. Royal -- Chad?

6 A. No. No, sir.

7 Q. Just to kind of wind that end of it up,  
8 after this -- after your investigation ended, or  
9 terminated, did you -- have you learned anything else  
10 since the termination of your investigation that  
11 would bear on this fire?

12 MS. DALY: Objection to form, and to  
13 when you're referring to -- the end of the  
14 investigation.

15 MR. WIGGINS: I'm referring to after  
16 he completed his investigation, whenever that was.

17 THE WITNESS: No, sir.

18 Q. (Mr. Wiggins) Now, in preparation for  
19 your testimony here today, Mr. Lacy, have you read  
20 any depositions or articles?

21 A. Yes, sir. I've read, to my knowledge,  
22 every -- I have reviewed transcripts of the  
23 depositions that I've been provided.

24 Q. Okay.

25 A. And examination under oath.

1 Q. Okay.

2 A. I don't know that I've gotten them all,  
3 but I've reviewed everything I've been given.

4 Q. Okay. Have you -- let me go through some  
5 of the players here.

6 You've reviewed the EUO's of Jimmy  
7 Diamantopoulos, have you not?

8 A. I have.

9 Q. You have reviewed the deposition of Jimmy  
10 Diamantopoulos, have you not?

11 A. I have.

12 Q. Have you reviewed the deposition of Mrs.  
13 Moon?

14 A. I have.

15 Q. Did you also interview Mrs. Moon?

16 A. I did.

17 Q. Yourself, you interviewed her?

18 A. I did.

19 Q. And did you review the deposition of Mr.  
20 Lapene?

21 A. I did.

22 Q. Did you interview Mr. Lapene?

23 A. I did.

24 Q. And did you review or have you read the  
25 deposition of Mr. Stone -- Steve Stone?

1 A. I have.

2 Q. And have you read and reviewed the  
3 deposition of Steve Booth?

4 A. I have.

5 Q. You knew Steve Booth.

6 A. I did.

7 Q. You know Steve Booth.

8 A. I do.

9 Q. How long have you known Steve Booth?

10 A. Approximately 10 years.

11 Q. Is that from professional associations  
12 that you've known him?

13 A. Yes, sir.

14 Q. And do you respect him as a -- as a cause  
15 and origin fire investigator?

16 A. Yes, sir.

17 Q. And did you know Mr. Stone prior to this  
18 particular case or have any contact with him?

19 A. I did not know him and have not had any  
20 contact with him -- other contact with him.

21 Q. But you have reviewed the findings of all  
22 the other experts in this case, and that would have  
23 been Mr. Stone, Mr. Booth, I believe, and I believe  
24 those are the only two that we've taken depositions  
25 of.

1 A. Yes, sir.

2 Q. Over the years you've told me that you've  
3 conducted and been conducting fire and origin  
4 investigations since the early '80s.

5 Approximately how many fires have you  
6 investigated over your career?

7 A. Approximately 3500.

8 Q. And have all of those been cause and  
9 origin issues in those cases, or has there been some  
10 other issues there?

11 A. Origin and cause.

12 Q. And I noticed that you've also been called  
13 and have qualified as an expert in other  
14 jurisdictions other than North Carolina also.

15 A. Yes, sir.

16 Q. What other states have you testified and  
17 qualified as an expert in?

18 A. At trial, Massachusetts. And then have  
19 been offered as an expert at deposition in Virginia,  
20 Ohio, Tennessee and Florida and South Carolina. I  
21 think that's it.

22 Q. Okay, have you participated in fires, test  
23 fires, during the course of your career? I'm sure  
24 you have.

25 A. Yes, sir.

1           Q.    Is that something that fire investigators  
2 do on a regular basis?

3           A.    Yes, sir.

4           Q.    What is the purpose of that?

5           A.    To observe fire behavior.

6                    I mean, there are some fires that are set  
7 for training purposes, simply just to watch. No  
8 particular concern as to what the fuel is or how it's  
9 lit -- just to watch.

10                   There are other fires that are set with a  
11 specific scenario in mind, and you -- and again, you  
12 -- you want to see what happens.

13                   1986 or 1987, one or the other. It's been  
14 a little while. I mean, we burned a couple of houses  
15 in Shelby, and my purpose for being there was to  
16 train police investigators from Charlotte.

17                   So we went in, laid on the floor of the  
18 room that was burning. Stayed as long as we could  
19 just to -- so he could see a fire burning. So you do  
20 it to document what occurs in any -- any fire  
21 situation or in specific scenarios that you're  
22 interested in.

23           Q.    Over the course of your career, as you've  
24 testified, you've participated in a good many arson  
25 investigations, and are there patterns that you look



1 for in arson investigations that aren't peculiar to a  
2 cause and origin or is it all the same?

3 A. You're looking for patterns in any origin  
4 and cause investigation, not just arson. Any fire  
5 investigation.

6 Q. What are the patterns that you look for in  
7 a cause and origin investigation?

8 A. Well, you're looking for the development  
9 of the fire at the origin, then spread of the fire,  
10 ventilation patterns. I mean, that's what -- that's  
11 what you're looking for.

12 Q. Okay, and if you see a fire that has  
13 multiple origins, is that an indicator of some sort?

14 A. Yes, sir.

15 Q. Is that an ar -- is that an indicator of  
16 arson?

17 A. Well, it's an indicator that the fire is  
18 incendiary in nature.

19 Q. And what about -- what about finding  
20 incendiary devices at a fire? That's also an  
21 indicator, is it not?

22 A. Indicator that the fire is incendiary.

23 Q. And if there is -- if there is some type  
24 of fuel present, or an incendiary material present,  
25 that's the -- that's the -- I suppose also a gauge of

1     what you might find?

2             A.     Well, understand that a fuel has to be  
3     present for any fire to occur.  So you -- I've got --  
4     the fire investigator has to identify the fuel  
5     involved in the fire on all fires ---

6             Q.     --- Okay.

7             A.     --- Whether they be accidental or  
8     incendiary.

9             Q.     That's a prerequisite?

10            A.     I wouldn't say it's a prerequisite.  I  
11     would just say it's one of those items that you have  
12     to identify prior to the conclusion of the  
13     investigation.

14            Q.     And do you also look for trailers?

15            A.     Yes, sir.

16            Q.     And explain what a trailer is.

17            A.     A combustible material, whether it be a  
18     liquid or a solid, that is used to spread the fire  
19     unnaturally from one area to another.

20            Q.     And anything else that you can think of  
21     that are such indicators that we've just been talking  
22     about?

23            A.     No, sir.

24            Q.     What about smoke?  I'm interested in smoke  
25     patterns, and you've talked about that.

1                   That is an indicator of sorts, is it not?

2                   MS. DALY:   Objection to form.

3                   THE WITNESS:   Indicator of what?

4                   MR. WIGGINS:   Indicator of the  
5   course and the flow of a -- of a flame.

6                   THE WITNESS:   Smoke is a byproduct  
7   of all combustion, and the manner in which it flows  
8   is of interest to the investigator.

9           Q.     (Mr. Wiggins)   Does smoke contain carbon  
10   monoxide or carbon dioxide or other combustible  
11   material?

12           A.     Yes.

13           Q.     Sometimes can that explode?

14           A.     Yes.

15           Q.     What happens if that catches an explosive  
16   force?   What happens in that kind of a fire?

17           MS. DALY:   Objection to form.

18           THE WITNESS:   It depends on the  
19   scenario at the time that it occurs.

20                   It can level a building, which is -- an  
21   explosion is the most perfect form of combustion.   Or  
22   it can just -- the carbon monoxide can continue to  
23   burn, so it can be ---

24           Q.     (Mr. Wiggins)   --- You mean, it can burn  
25   by itself, that is the fuel source?

1 MS. DALY: Objection to form.

2 THE WITNESS: Only after a -- after  
3 a fire is occurring elsewhere. But carbon monoxide  
4 is combustible.

5 MR. WIGGINS: I see. I see.

6 THE WITNESS: Carbon dioxide is not.

7 Q. (Mr. Wiggins) Okay, are there other  
8 combustible materials in smoke other than carbon  
9 monoxide?

10 A. There are other gases, and some are  
11 combustible, some are not.

12 Q. What produces those gases in smoke?

13 A. Fire as we know it, as we watch it -- if  
14 you watch on -- if you see video on a television or  
15 if you actually watch it in person, is actually  
16 incomplete combustion, meaning not everything is  
17 consumed by the fire.

18 In an explosion -- let me rephrase that.  
19 An explosion is complete combustion.

20 Q. Okay.

21 A. Is perfect combustion.

22 So when you have incomplete combustion,  
23 these fire gases, carbon monoxide -- carbon monoxide  
24 and a host of others are produced. The more  
25 incomplete combustion you have, the greater

1 production of gases. The less incomplete combustion,  
2 the less production of gases.

3 Q. When you got to the Miami Subs Restaurant  
4 and you -- after you interviewed Jimmy, you then went  
5 into the restaurant to begin your investigation. Is  
6 that not correct?

7 A. Yes, sir.

8 Q. And just walk me through what you did.

9 A. I walked in the side door. If you stood  
10 on McPherson Church Road and looked at the front, it  
11 would be the right side. And since I know we're  
12 going there, drive-thru windows would be on the left  
13 side.

14 Q. Okay.

15 A. Walked in the side door and just walked  
16 around the interior of the restaurant, starting in  
17 the seating area. And there was a little game room.  
18 Walked through all of that.

19 Then wandered behind the cash registers,  
20 then wandered in the line where the cooking equipment  
21 was. Then came back out, went to my right. That led  
22 me into the area where the rear drive-thru window was  
23 located.

24 I don't think I immediately went toward  
25 the rear door until we got it open and got a little

1 bit more light back there. That was the only area  
2 that did not have windows.

3 I try not to walk around dark fire scenes,  
4 because you don't know what's hanging from above ---

5 Q. --- Absolutely.

6 A. --- Or what the floor is.

7 Q. Absolutely.

8 A. So yeah, we -- once we got the rear door  
9 opened, I went on down that hall from the drive-thru  
10 window area to the rear door area.

11 Q. Okay.

12 A. But I just -- I -- I don't have -- I don't  
13 take my note pad, I don't take my camera. I just  
14 walk in and make observations.

15 Q. And when you -- so that we're on the same  
16 page of music, when you talk about the front window  
17 -- there were two drive-in windows ---

18 A. --- Yes, sir.

19 Q. --- At the Miami Subs Restaurant.

20 A. Yes, sir.

21 Q. And the front window would have been the  
22 one that you subsequently identified as being the  
23 source of the fire?

24 A. Sir, it may be a matter of semantics, but  
25 I actually believe that's the rear drive-thru window.

1 Q. Okay. I just want to be sure we were  
2 talking about the same window.

3 You think that's the rear ---

4 A. --- To me, that's the rear of the  
5 building, so that's -- it's kind of confusing,  
6 because it -- when you -- when you drive -- when you  
7 go through the drive-thru process, it is the first  
8 window you come to.

9 Q. That's what I was thinking.

10 A. But to me, it's at the rear of the  
11 building.

12 Q. Okay. Well, yesterday we talked about  
13 that as being the first window.

14 A. I think it's called window one.

15 Q. Okay, window -- let's call it window one,  
16 then.

17 A. But to me, it's at the rear of the  
18 building.

19 Q. So can -- for the purpose of our  
20 discussions today can we call it window one ---

21 A. --- Yes, sir.

22 Q. --- So that we are on the same page of  
23 music and we're not confusing each other.

24 A. That's fine.

25 Q. Okay. And I noticed in your drawings you

1 have -- you've identified that.

2 You've got -- you've got your notes before  
3 you there?

4 A. Yes, sir.

5 Q. Okay, look at the drawings ---

6 A. --- Which one you got?

7 Q. The first one I have is ---

8 A. --- Okay, I've got that one in my hand.

9 Q. And you've got various numbers on this  
10 sheet.

11 Tell me what that is.

12 A. The numbers inside the circles or the  
13 squares indicate number of chairs.

14 Q. Okay, and that's all that's shown on this  
15 -- on this particular sheet. Is that correct?

16 Just trying to give an outline of the  
17 restaurant and where there's chairs and ---

18 A. --- And some -- couple measurements.

19 Q. Okay. And a couple -- I see the  
20 measurements.

21 And then you've got Pepsi, coffee. Is  
22 that what that is?

23 A. Tea and Pepsi.

24 Q. Tea and Pepsi.

25 A. That is the beverage bar.



1 Q. Okay.

2 A. To put it in perspective, sir, McPherson  
3 Church would be at the top of the diagram.

4 Q. Okay.

5 A. Do you see where the word ---

6 Q. --- I do.

7 A. Do you see where the word, date, is?

8 Q. I do.

9 A. I didn't write McPherson ---

10 Q. --- I see.

11 A. --- But that would be the McPherson side.

12 The right side would be -- near where you  
13 see 2.0, the right side would be the game room.

14 Q. Okay.

15 A. Then the bottom, if -- if something were  
16 to be drawn below Pepsi, coffee, tea and Pepsi, the  
17 next thing to draw would be the line where the cash  
18 registers are.

19 Q. Okay, and would that be shown on the next  
20 drawing that you have?

21 A. It is.

22 Q. Okay. And I see a sofa, table and ---

23 A. --- Love seat.

24 Q. --- And love seat, and I see measurements  
25 on that.

1                   Then you've got four -- you've got tables  
2 and you've got four, four.

3                   Is that the seating area there?

4           A.     No.   It's the number of chairs, or number  
5 of people ---

6           Q.     --- Number of chairs.

7           A.     Number of people that -- and understand,  
8 some of these are benches, so number of people who  
9 could sit at that table.

10          Q.     Okay, and then you've got a square in the  
11 middle -- or rectangle in the middle, 13 by 10.

12          A.     That's a pool table.

13          Q.     Pool table.

14                 And this is the game room that you had  
15 referenced here earlier on?

16          A.     Yes, sir.

17          Q.     And the next drawing that you have is the  
18 -- is the drive-thru.

19                 Is that the drive-thru window shown in  
20 this one -- in this drawing?

21          A.     With all due respect, can you show me what  
22 you're looking at.

23          Q.     I'm sorry.

24                 (Witness examined document)

25          A.     Yes, sir.   I have that drawing -- I have

1     that diagram in front of me.

2                     At the top left corner you see a square  
3     penetrating a vertical line.

4             Q.     Okay.

5             A.     You see the vertical line originating  
6     under the word, case?

7             Q.     I do.

8             A.     Okay, come down about an inch.

9             Q.     Okay.

10            A.     And you see a square through -- around  
11     that line?

12            Q.     Uh-huh.

13            A.     That is the number one drive-thru window.

14                    If you come down on that wall near where  
15     you see a CR ---

16            Q.     --- Do you have it -- you don't have it  
17     marked one on yours?

18            A.     No, sir.

19            Q.     Would you mark it on mine and put your  
20     initial by it, just so I know where we're talking ---

21            A.     --- Do you want me to mark ---

22                               MS. DALY:   --- Do you want it with  
23     the red pen ---

24                               MR. WIGGINS: --- Yeah.   Oh, that.  
25     Yeah.

1 MS. DALY: --- So that it shows up?

2 MR. WIGGINS: Yeah, please.

3 THE WITNESS: Do you want me to mark  
4 number two?

5 MR. WIGGINS: Yes, please. We got  
6 it down pat.

7 THE WITNESS: Okay.

8 (Witness marked document)

9 MR. WIGGINS: Thank you.

10 Q. (Mr. Wiggins) And you've got the first  
11 drive-thru window shown there.

12 A. Yes, sir.

13 Q. And then behind that you've got a grill,  
14 and that is the kitchen area?

15 A. Yes, sir. You see refrigerator, grill,  
16 deep fat fryers, food prep, and then FF for french  
17 fry.

18 Q. And please, again, draw on there where  
19 McPherson Church Road would be in reference to that  
20 drawing, and where Skibo Road would be in reference  
21 to that drawing -- or 401 bypass.

22 A. Okay.

23 (Witness marked document)

24 Q. Thank you.

25 A. Uh-huh.

1           Q.     And look -- look down, Mr. Lacy, where you  
2 got beside 88.

3                     Do you see that number?

4           A.     Yes, sir.

5           Q.     What does that have reference to?

6           A.     That ice cream box is 88 inches across the  
7 front ---

8           Q.     --- Okay.

9           A.     --- 88 inches wide.

10          Q.     And 23 is the -- is the width of it?

11          A.     Umm, 28.

12          Q.     I'm sorry, 28.

13                     And then above that you've got another  
14 drawing of a -- I'm sorry. I can't read that.

15          A.     The 28-by-31 box?

16          Q.     Yes, sir.

17          A.     That is a refrigerator -- refrigeration  
18 box. It contains bottles of water and packs of salad  
19 dressing.

20          Q.     Okay, and then going back to where you've  
21 marked the first drive-thru window to be, behind that  
22 is the office. Is that not correct?

23          A.     Correct.

24          Q.     Okay, and that would be shown on your next  
25 drawing, or would it be shown in your next drawing?

1 A. Hang on one second.

2 (Witness examined documents)

3 A. Yes, sir.

4 Q. Okay.

5 A. Well, let me see what you're looking at,  
6 just so I can be sure ---

7 Q. --- Be sure we're ---

8 A. --- Yeah, we're looking at the same thing.  
9 That is.

10 Q. That's good.

11 A. Yes, sir.

12 Q. And -- I'm sorry. Go ahead.

13 A. This shows the hallway going toward the  
14 rear of the building, but it also includes the office  
15 areas.

16 Q. Okay.

17 A. The -- right under the -- you see a number  
18 36 at the top?

19 Q. I do.

20 A. That is the width of the drive-thru window  
21 number one.

22 Q. Okay, and that's the one we've been  
23 talking about.

24 A. Yes, sir. There's 22 inches between the  
25 window and the wall.

1 Q. Okay.

2 A. Coming down the wall there's 70 and a half  
3 inches between the exterior wall and the door to that  
4 office. Then that office is 48 and a half inches  
5 deep and 105 inches wide.

6 Q. Is there a door -- where you have 34.5, is  
7 there a door there?

8 A. No, sir.

9 Q. Okay, and there is no door leading from  
10 that area back into the office, then?

11 A. Not into the area that's 70 -- that's 48.5  
12 inches deep and 105 inches wide.

13 Q. Okay.

14 A. There's one door leading into the area  
15 that's 59.5 by 55.5.

16 Q. And what is that -- what is that area  
17 there?

18 A. To me, they're both the office.

19 Q. Okay, was one more of a storage area than  
20 the -- than the office area?

21 A. I do not know.

22 Q. Couldn't -- couldn't tell.

23 And then coming back, again, just get  
24 orientation, would you write on here again in red,  
25 show McPherson Church Road just so we'll know which

1 direction we are looking, and 401 bypass, or Skibo.

2 A. Okay.

3 (Witness examined document)

4 Q. What you've drawn on this, Mr. Lacy, the  
5 bottom of this page you've shown McPherson Church  
6 Road, and to the left of your drawing you've shown  
7 Skibo Road. Is that correct?

8 And the ---

9 A. --- Whoa, whoa, whoa, whoa. May I have  
10 that back?

11 Q. Yes. It's kind of difficult to get the  
12 orientations on these things.

13 A. Hang on a minute.

14 (Witness examined document)

15 A. Yeah.

16 Q. The drive-thru window faces ---

17 A. --- No, hang on a minute. Hang on a  
18 minute.

19 The drive-thru window faces ---

20 Q. --- Skibo.

21 A. --- Skibo.

22 Q. Uh-huh.

23 A. I'm comfortable with that.

24 Skibo and McPherson Church intersect, so I  
25 guess I did actually -- I actually -- I did have it



1 right. I apologize.

2 Q. That's quite all right. Thank you.

3 So what we've got here is the number one  
4 drive-thru window faces Skibo Road. Is that correct?

5 A. Yes, sir.

6 Q. And McPherson Church Road would be on the  
7 -- would be at the left side of your drawing?

8 A. Yes, sir.

9 Q. On this drawing you do not show drive-in  
10 window number two.

11 A. I do not.

12 Q. Okay, let's go to the next drawing, and  
13 that would be this one.

14 Is that what you have?

15 A. Yes, sir.

16 Q. And that is a -- you're going to have to  
17 tell me what this is.

18 A. Okay.

19 Q. Because I don't recognize this.

20 A. This is the ---

21 Q. --- I do. I do. This is the entrance?

22 A. No, sir, this is the rear -- rear hallway.

23 Q. Okay.

24 A. Pick up the last one we just worked on.

25 Q. Okay.

1 A. Lower left you'll see WH, water heater.

2 Q. I got that, yes.

3 A. Okay, orient that with the water heater on  
4 this.

5 Q. I got it.

6 A. This is just an extension of the -- of  
7 that area.

8 You see the door on the right-hand side  
9 marked by 41 and a half inches. On the right-hand  
10 side you see a door opening about midway, and you see  
11 the number 41 ---

12 Q. --- 41.5.

13 A. That is the rear door of the -- of the  
14 building.

15 Q. Okay.

16 A. This area that's 82 inches by 40 and a  
17 half inches is where electrical panels are located,  
18 and then the area that's 63 by 75 is storage.

19 The drive-in -- drive-thru window number  
20 one would be continuing up the top of the....

21 Q. Drawing.

22 A. Drawing. So Skibo Road would be at the  
23 top and ---

24 Q. --- Again, we'll write it on there just so  
25 we'll know exactly where we are.

1 (Witness marked document)

2 A. And then -- and because this is just a  
3 continuation of that other diagram, McPherson Church  
4 is going to be on the left.

5 (Witness marked document)

6 Q. Okay, and then the next drawing is a -- it  
7 looks like it's a drawing of the entire outer  
8 perimeter of the building?

9 A. Correct.

10 Q. And this has somewhat the same numbers as  
11 your earlier drawings except it's for the entire  
12 perimeter of the building?

13 A. Correct.

14 Q. Then the next page you've got freezer on  
15 exterior rear of building, depth 92.5, length 380.5.

16 Was this an enclosed freezer or was it a  
17 free -- standalone?

18 A. This -- this is a freezer that is outside  
19 of the envelope of the building, but you actually  
20 enter it from that rear hall.

21 Q. Okay. Okay, now, going back to what we  
22 were talking about earlier, you said you didn't walk  
23 around that area.

24 You walked around everything we've looked  
25 at here on your -- on your drawings.

1 A. Inside and outside.

2 Q. And without camera, without taking notes,  
3 just making the walk.

4 A. Yes, sir.

5 Q. And you looked at all those areas?

6 A. Yes, sir.

7 Q. And what did you do next?

8 A. Photographed them.

9 Q. Okay, and what kind of a camera do you  
10 use?

11 A. Digital.

12 Q. Is it a 3D digital camera?

13 A. It's not 3D, no, sir.

14 Q. And the purpose of that was to photograph  
15 the entire fire scene as you observe -- as you were  
16 observing it when you were walking through this  
17 restaurant?

18 A. Yes, sir.

19 Q. And was there evidence of fire suppression  
20 when you walked through the building?

21 A. No direct evidence of fire suppression,  
22 but I knew the fire had been suppressed.

23 Q. Okay, and after you began taking  
24 photographs -- and I think I have -- how many  
25 photographs did you take? Do you recall?

1           A.     Sir, I never counted them. I would say,  
2 all told, probably close to a thousand.

3           Q.     Did you use all -- you didn't develop the  
4 whole thousand and furnish them to counsel, did you?

5                   MS. DALY: Objection to form.

6                   MR. WIGGINS: If you know.

7                   THE WITNESS: Well, they're digital  
8 photographs, so I did not print them all, but I have  
9 provided all of them to counsel.

10          Q.     (Mr. Wiggins) On a tape, on a ---

11          A.     --- On a CD.

12          Q.     On a CD. Okay.

13                   Some of them I want to show you and just  
14 you and I discuss here for a few minutes and -- just  
15 to kind of, again, get oriented.

16                   I'm going to show you -- I think I've  
17 already marked these as Plaintiff's Exhibit Number  
18 94.

19                   MS. DALY: Mr. Wiggins, before we  
20 get into that, may we take a five-minute comfort  
21 break?

22                   MR. WIGGINS: Oh, yeah, sure.

23                   MS. DALY: Thank you.

24                   MR. WIGGINS: Sure.

25                   (11:14-11:19 a.m. - recess)

1           Q.     (Mr. Wiggins) Mr. Lacy, I'm going to show  
2     you what's been marked as -- for identification as  
3     the Plaintiff's Exhibit Number 94 and ask if you can  
4     -- I think this is one of your photographs -- if you  
5     can, identify that.

6           (Witness examined document)

7           A.     Yes, sir.

8           Q.     And what is this?

9           A.     It is a photograph of drive-thru window  
10    one, which you see the light showing through the  
11    window on the left center of the photograph.

12          Q.     I do.

13          A.     The wall to the right of that where you  
14    see the electrical boxes mounted in a conduit running  
15    ---

16          Q.     --- I do.

17          A.     --- Is a wall of the office area. And  
18    then on the left side is the remains of the bread  
19    cart.

20          Q.     Okay. Now, tell me what material the wall  
21    was made of, if you know.

22          A.     Fiberglass reinforced panels.

23          Q.     Okay, and is that a flammable material, in  
24    your opinion?

25          A.     No, sir.

1 Q. The bread cart that you see in this  
2 photograph, it's all folded together?

3 A. No, sir. Those are trays ---

4 Q. --- I see.

5 A. --- That were inside the bread cart.

6 Q. Okay.

7 A. Stacked inside, and so -- and they  
8 remained stacked after the fire.

9 Q. Okay. You took this photograph at an  
10 angle looking toward -- looking toward number one  
11 drive-thru window?

12 A. Mr. Wiggins, I'm not going to say for sure  
13 that I took this photograph.

14 I will agree that it is a photograph of  
15 the fire scene, and I took a whole lot of similar  
16 photographs ---

17 Q. --- Okay.

18 A. --- But I -- I'm not going to swear to you  
19 ---

20 Q. --- That you took this one?

21 A. --- That this is my photograph.

22 Q. I understand.

23 A. But I recognize it as a photograph of the  
24 interior of the fire scene.

25 Q. And is this what you saw -- what I'm

1 getting at, really, is what -- is this what you saw  
2 the first day you were on site?

3 A. Yes, sir.

4 Q. Okay, and that's fairly representative of  
5 what you saw?

6 A. Yes, sir.

7 Q. I show you what has been previously marked  
8 for identification as Plaintiff's Exhibit Number 97,  
9 Mr. Lacy, and ask if you can identify that  
10 photograph.

11 And again, I don't know whether you took  
12 this. I thought you did, but you may not have.

13 A. Well, first, Mr. Wiggins, I'm not going to  
14 deny taking it, but before I say that I did take it,  
15 I would obviously like to compare it to my  
16 photographs.

17 Q. Okay.

18 A. But it is representative of the fire  
19 scene.

20 Q. Okay, and tell me what this scene is  
21 looking at.

22 A. I'm looking straight on at drive-in --  
23 drive-thru window number one. You see the broken-out  
24 glass?

25 Q. I do.



1           A.     That's the bread cart to the left and the  
2 wall to the office to the right.

3           Q.     Okay, and are those trays to the bread  
4 cart on the left lower part of this photograph?

5           A.     Yes, sir.

6           Q.     Okay, let me show you what has been marked  
7 for identification as Plaintiff's Exhibit Number 114  
8 and ask if you can identify that photograph, Mr.  
9 Lacy.

10          A.     Yes, sir.

11          Q.     And what is this representative of?

12          A.     Okay, first, the manner in which it's  
13 labeled is upside down.

14          Q.     I understand that. I see it is.

15          A.     Okay, so if you've got the exhibit label  
16 in the lower left, it is the -- it's a photograph of  
17 the office wall like -- orient it like this, sir.

18          Q.     Okay.

19          A.     Yes, sir. It is a photograph of the  
20 office wall.

21                    You see a little bit of drive-thru window  
22 number one on the left side of the photograph right  
23 above the label, and then you see the door to the  
24 office.

25          Q.     Okay.

1 A. And you've got the ceiling above it.

2 Q. And I see a lot of wiring in that ceiling.

3 Do you know what that wiring went to,  
4 where all that housing was for -- what it -- what  
5 that housing was for?

6 A. A substantial amount of it was  
7 communication or sound equipment. Was not  
8 electrical.

9 Q. And can you identify in this photograph  
10 what has later become identified as a protected area  
11 on the wall next to the drive-in window?

12 A. Yes, sir. You see it on the left side of  
13 the photograph just to the right of the portion of  
14 the window that's illustrated in the photograph.

15 Q. Okay, and did you pay any attention to  
16 that on the day that you were there doing your  
17 initial investigation?

18 A. By all means.

19 Q. Okay, did you note it somewhere in your  
20 notes?

21 A. I did.

22 Q. Okay, and ---

23 A. --- Well....

24 Q. I'm sorry. Go ahead.

25 A. I don't know that I wrote it down.

1                   I use my photographs as some manner of  
2   documenting some items. I don't necessarily write  
3   down everything but I take a picture of it.

4           Q.    And you had measured the distance from  
5   that window to the angle of the wall there, had you  
6   not?

7           A.    Okay, is angle of the wall ---

8           Q.    --- You -- the ---

9           A.    --- The same thing as corner?

10          Q.    Right. The corner. I'm sorry. Yeah.

11          A.    No, no problem. I just want to be sure,  
12   again, we're on the same page.

13          Q.    Right, right.

14          A.    Yes, sir, I have.

15          Q.    And that's in the notes that we just  
16   looked at earlier. That is ---

17          A.    --- It's in the diagrams, yes, sir.

18          Q.    In the diagrams.

19                   I believe -- and just so we're -- go back  
20   and look at that and let's see what it was.

21           (Witness examined documents)

22          Q.    Do you have it?

23          A.    Yes, sir.

24          Q.    What is that?

25          A.    It's 22 inches.

1 Q. Not quite two feet.

2 A. Correct.

3 Q. Two inches short of two feet. Is that  
4 correct?

5 A. One -- one -- one foot 10 inches.

6 Q. Okay, and all of this -- most of this  
7 wiring you see in the ceiling there, you said, goes  
8 to the audio equipment in the office?

9 Was that what that would have been?

10 A. First, I saw very little that would be  
11 considered branch circuit electrical wiring.

12 Q. Okay.

13 A. I would believe that most of it would be  
14 audio, video, or some other type of communication  
15 equipment.

16 Q. Okay. Now, I see in this photograph the  
17 entire ceiling was gone. Is that ---

18 A. --- Yes.

19 Q. --- What you saw when you went there?

20 A. Yes, sir.

21 Q. What kind of ceiling was in that building,  
22 Mr. Lacy?

23 A. A drop-in ceiling, also called a false  
24 ceiling, with panels that drop into a tray.

25 If you see this, where I'm running my ---

1 Q. --- I do. I see that.

2 A. Okay, that is the framing for the drop-in  
3 ceiling.

4 Q. Okay, and what was that drop-in ceiling  
5 made of?

6 A. Celo -- well, celotex.

7 Q. Is that highly flammable?

8 A. The finish on it is not, because of the  
9 health department requirements. It will smolder more  
10 than it will burn.

11 Typically what happens is after it gets  
12 hot, and then wet from firefighter -- fire  
13 suppression hoses, it just crumbles.

14 Q. Okay, and when you went there -- I'm  
15 sorry. I have a cold that I can't quite shake.

16 When you went there did you see all of  
17 that celotex material on the floor?

18 A. In this area -- in other words, if this  
19 photograph extended on down to the floor, that floor  
20 area was reasonably clean from where S -- SBI Special  
21 Agent Royal had examined the floor. I saw piles of  
22 debris in which I believe celotex debris was located.

23 Q. Okay, and it had not been completely  
24 consumed by fire? Let me strike that.

25 You tell me what degree of fire had

1 consumed that celotex material.

2 MS. DALY: Objection to form.

3 THE WITNESS: No, it had not been  
4 totally consumed, and in -- probably very little of  
5 it had been consumed.

6 As I mentioned earlier, the heat from a  
7 developing and spreading fire damages the integrity  
8 of the celotex panel. Water from fire suppression  
9 hoses destroys the integrity of the celotex panel,  
10 and typically it then just falls to the floor and  
11 becomes a mushy gray material.

12 Q. (Mr. Wiggins) And you observed some of  
13 that mushy gray material when you were there on the  
14 26th of January?

15 A. Yes, sir.

16 Q. I show you what has been marked for  
17 identification as Plaintiff's Exhibit Number 112, Mr.  
18 Lacy, and again ask you if that is something you can  
19 identify and speak to.

20 (Witness examined document)

21 A. Yes, sir. That is the ceiling in the rear  
22 hall.

23 Q. And -- I'm sorry. Go ahead.

24 A. You see some wall surface on the bottom  
25 left of the photograph, and that is the wall to the

1 office.

2 Q. And there is a chain to the right portion  
3 of the photograph.

4 Do you see that chain?

5 A. Yes, sir.

6 Q. What does that extend to?

7 A. I do not recall.

8 Q. And there is a fluorescent light in this  
9 photograph.

10 A. Yes, sir.

11 Q. And was that photo -- was that -- did you  
12 observe that fluorescent light at the time of your  
13 initial visit to the restaurant?

14 A. I did.

15 Q. How many of those lights were in the area  
16 where window number one was located?

17 A. I believe it would have been these two  
18 lights that are in this photograph.

19 Q. Okay.

20 A. I mean, that would have been -- they would  
21 have been directly in front of the window, and I  
22 believe that was it.

23 Q. Okay, and I see some material hanging down  
24 just to the lower left of the fluorescent lighting.

25 Do you see that?

1 A. Yes, sir.

2 Q. Would that be the celotex material we  
3 spoke about earlier ---

4 A. --- It would.

5 Q. --- Some of it?

6 A. It would.

7 Q. I show you what I've marked as Plaintiff's  
8 Exhibit Number 115, Mr. Lacy, and ask if you can  
9 identify and speak to that photograph.

10 (Witness examined document)

11 A. Sir, I believe it is a fluorescent light  
12 fixture.

13 Q. Okay, and is it on -- do you know where it  
14 is located in this photograph?

15 A. No, sir.

16 Q. But it's typical of all the fluorescent  
17 lighting system you saw in the restaurant?

18 A. Yes, sir.

19 Q. I show you what has been marked as  
20 Plaintiff's Exhibit Number 95 and ask if you can  
21 identify that photograph.

22 (Witness examined document)

23 A. Yes, sir. That is the left rear corner of  
24 the restaurant.

25 Shown in the upper left-hand corner of



1 this photograph is drive-thru window number one.

2 Q. Okay.

3 A. Shown in the bottom left corner is a  
4 portion of the wheeled bread cart.

5 And then, shown on the upper right-hand  
6 corner of the photograph is the wall to the office.

7 Q. And it is no longer there. It's gone.

8 A. Correct.

9 Q. And is part of that wall lying on the  
10 floor?

11 A. It is.

12 Q. And had it partially been consumed by  
13 fire?

14 A. I don't know that it had been consumed by  
15 fire, but it had been partially damaged by fire. I  
16 believe firefighters pulled the rest of it down.

17 Q. Okay, and do you know what that black  
18 thing is in the lower part of the photograph?

19 A. I believe it's a cash register drawer.

20 Q. Okay, could you identify where that cash  
21 register drawer had been prior to the fire?

22 A. No, sir.

23 Q. I show you what has been marked for  
24 identification as Plaintiff's Exhibit Number 108 and  
25 ask if you can identify and speak to this photograph.

1 (Witness examined document)

2 A. I don't know what that is.

3 Q. I think what -- are you talking about the  
4 writing on this?

5 A. Yeah. I mean, I -- I -- I haven't looked  
6 at it hard, but I'm seeing handwriting, some of which  
7 I can't recognize.

8 Q. Okay. This is handwriting -- I -- let me  
9 represent to you what it is.

10 That's the handwriting of Chad Royal, I  
11 believe.

12 MS. DALY: I'm not certain.

13 Q. (Mr. Wiggins) I had asked -- this is  
14 where he talked about identifying and -- and found  
15 the printed circuit board, Mr. Lacy.

16 And then to the left he has got where he  
17 placed the electric -- the circuit board.

18 A. Okay, this is a wall -- the floor area  
19 underneath drive-thru window number one.

20 Q. Okay.

21 A. I would prefer not to make any comment on  
22 the words written on it.

23 Q. I don't want you to ---

24 A. --- Okay.

25 Q. --- Make any comment about that. I just

1 wanted you to comment on the ---

2 A. --- Because I'll be honest with you, I  
3 don't -- I can't read the words.

4 Q. Okay. What I want you to look at is the  
5 debris that's in that pile to the right lower part of  
6 that photograph.

7 A. Yes, sir.

8 Q. Was that representative of what you saw on  
9 the first walk-through that you made of the  
10 restaurant?

11 A. No, sir, that debris had been removed.

12 Q. Do you know -- did you ask anyone who had  
13 removed it?

14 A. Chad Royal told me he had.

15 Q. Okay.

16 A. And he pointed to me the pile in which he  
17 moved it to.

18 Q. Okay, and where did he move it to?

19 A. Utilizing the position in which he was  
20 standing to take this photograph, it would be about  
21 two feet to his left.

22 Q. Okay.

23 A. In -- going back toward the front of the  
24 restaurant.

25 Q. And that's what you found when you went

1       there?   Is that true?

2           A.     Found what?

3           Q.     That you found this material moved to a  
4       different location ---

5           A.     --- Yes, sir.

6           Q.     --- According to what you were told by Mr.  
7       Royal.

8           A.     Yes, sir.

9           Q.     SBI Agent Royal.

10          A.     Yes, sir.

11          Q.     And did you ask him what he had found in  
12       this area, if anything?

13          A.     I -- I -- I don't recall if I posed a  
14       question to him in that manner, no, sir.

15          Q.     Okay, and did he tell you that he had  
16       found or discovered anything of interest in that  
17       pile?

18                       MS. DALY:   Objection to form.

19                       THE WITNESS:   At some point on  
20       January 26 or January 27 he told me that he had found  
21       some printed circuit boards and had placed them on  
22       the counter toward the front of the restaurant.

23                       MR. WIGGINS:   Okay.

24                       THE WITNESS:   I don't know where the  
25       printed circuit boards came from exactly, but looking

1 at them, observing heat damage, part -- observing the  
2 heat damage that they sustained, I'm comfortable they  
3 came from this area.

4 MR. WIGGINS: Okay.

5 THE WITNESS: But where they were  
6 exactly, I do not know.

7 Q. (Mr. Wiggins) Okay, I'll represent to  
8 you, again, Mr. Lacy, this is his handwriting. He  
9 said I placed the electric circuit boards in this  
10 location.

11 Do you see there?

12 A. (No response)

13 Q. Did he ever tell you he had done that?

14 A. No, sir.

15 Q. Okay, one other thing.

16 He did tell you, though, that he had found  
17 this in the debris pile just below and to the right  
18 of the drive -- number one drive-thru window.

19 A. Told me he found what?

20 Q. These printed circuit boards.

21 A. I don't recall his explanation as being  
22 that detailed.

23 Q. Okay. Just so I understand exactly, he  
24 told you that he had found the printed circuit boards  
25 in that area.

1                   Is that what it was?

2           A.     Yes, sir.

3           Q.     Okay. I show you what has been marked for  
4     identification as Plaintiff's Exhibit Number 103 and  
5     ask if you can identify that photograph.

6           A.     I've got two other ones.

7           Q.     I'm sorry.

8           A.     No, that's okay. I just realized -- that  
9     is the wall surface in the office.

10          Q.     What is that box in the lower right  
11     portion of the photograph?

12                   Do you see that?

13          A.     I do not know.

14          Q.     And the wiring -- all of this wiring that  
15     you see here you have identified as being in the  
16     office? Is that correct?

17          A.     Yes, sir.

18          Q.     Okay. And then this flat material in the  
19     middle of the photograph, do you know what that is?

20          A.     Not specifically, no.

21          Q.     And do you know what this wiring  
22     controlled in that -- particularly in the office?

23                   MS. DALY: Objection to form.

24                   THE WITNESS: I do not.

25          Q.     (Mr. Wiggins) Okay, I show you what I've

1 marked as the Plaintiff's Exhibit Number 99 and see  
2 if you can identify that photograph.

3 (Witness examined document)

4 Q. That may be pretty close to one I've shown  
5 you earlier.

6 (Witness examined document)

7 Q. Is that the drive-in window number one to  
8 the right there that I'm looking at here?

9 A. I don't believe so.

10 Q. Okay, then maybe I got disoriented.

11 Do you recognize this photograph at all?

12 A. I believe this is the opening from the  
13 rear wall -- rear hall into the office area.  
14 However, I'm not real sure.

15 Q. Okay.

16 A. I think the photograph that you just saw  
17 -- showed me -- and I don't know the number of them  
18 -- 114 -- 163 -- I'm sorry -- 163 would have been  
19 taken further to the left -- further to the right.

20 Q. Okay.

21 A. But I'm -- but in all honesty, I would  
22 like -- I did not take this photograph, so I would  
23 like to examine other photographs to tell you exactly  
24 where it is. But I believe it's the opening from  
25 that rear hall into the office.

1                   If that -- if that is the case, the  
2 drive-thru window is to the left of this photograph.

3           Q.     Number one drive-thru window?

4           A.     Yes, sir.

5           Q.     Again let me show you what has been marked  
6 as Plaintiff's Exhibit Number 98, and this is similar  
7 to one you've identified earlier, but just a  
8 different photograph.

9                   Do you -- can you identify that  
10 photograph?

11           A.     Yes, sir. This is the floor area just  
12 inside drive-thru window number one, and it shows the  
13 rolling -- or the rolled aluminum bread cart to the  
14 left. You see the cash register drawer. Right under  
15 the 98 label you see the wall.

16                   And this photograph was taken before  
17 Special Agent Royal conducted his fire scene  
18 examination.

19           Q.     Okay, and this was before he had moved the  
20 debris to a different location. Is that correct?

21           A.     Yes, sir.

22           Q.     And I think you further identified that it  
23 was moved from the top of where this photograph is to  
24 a location back this side of the bread cart.

25                   Is that -- do you have any ---



1           A.     --- I'm not real sure what you mean by  
2     this side.

3           Q.     I'm sorry. I'm sorry. The lower part of  
4     the bread cart in this photograph.

5           A.     I believe the debris was moved to what  
6     would be the lower left corner of the photograph.

7           Q.     The lower -- and when I say this side, I  
8     mean, as I'm looking at it here, this side of that  
9     bread cart right here that you've identified.

10          A.     Yes, sir. If you run a little bit lower  
11     and a little bit to your left of the photograph, that  
12     would be where the debris went.

13          Q.     Did Special Agent Royal tell you that he  
14     had bagged any of that material?

15          A.     He did not.

16          Q.     Did you learn that he had bagged any of  
17     that material?

18          A.     I did not.

19          Q.     Did you bag any of that material?

20          A.     I did not.

21          Q.     I show you what has been marked as the  
22     Plaintiff's Exhibit Number 110, and I'll represent to  
23     you this is a photograph I know that was taken by  
24     Chad Royal.

25                     Can you identify that photograph?

1 (Witness examined document)

2 A. This is going to be the wall and floor  
3 area underneath drive-thru window number one. On the  
4 left-hand side you see what is the right rear corner  
5 of the wheeled aluminum bread cart.

6 Q. And do you recognize the object that's  
7 leaning against the wall in the center of this photo  
8 ---

9 A. --- In all honesty, sir, the debris is not  
10 -- well, the photograph ---

11 Q. --- Yes.

12 A. --- Is not detailed enough, and I cannot  
13 zoom in on it to recognize -- to conclusively  
14 identify what it is.

15 Q. Okay, do you have an idea what it is?

16 A. I see a shape that is consistent with a  
17 printed circuit board.

18 Q. Okay.

19 A. But that's all I -- that's the only way I  
20 can describe it.

21 Q. Okay. And I see dark spots on the top of  
22 that object, whatever it is, dark areas in the top,  
23 dark areas to the lower side, and it seems to be of a  
24 gray or grayish-blue color.

25 Do you see that?

1 MS. DALY: Objection to the form of  
2 the question, to the statement.

3 Q. (Mr. Wiggins) Do you see the coloring in  
4 that photograph?

5 (Witness examined document)

6 A. To an extent, yes.

7 Q. Okay.

8 A. Any -- any black that we're looking at on  
9 those items leaning against the wall could be debris  
10 or the result of incomplete combustion, sooting and a  
11 lack of total burning.

12 Q. I show you what has been marked as Exhibit  
13 Number 113 and ask if you can identify that.

14 And I'll represent to you that's just a  
15 closeup of the prior photograph that you looked at.

16 A. Okay, the exhibit label is placed in an  
17 incorrect location.

18 Q. It is.

19 A. Okay.

20 Q. It is.

21 A. I still -- I still see something that I  
22 believe to be a printed circuit board, but  
23 insufficient detail to -- to describe it any further.

24 Q. Okay. Do you see those grooves on the --  
25 on that ---

1 A. --- Yes, sir.

2 Q. --- Instrument, whatever it is?

3 A. Yes, sir.

4 Q. And you see screw -- I see screws on that  
5 -- on that board.

6 Do you see that?

7 A. Okay, I'm not real sure what you're  
8 referring to as board.

9 Q. Well, I'm just calling it the board ---

10 A. --- Okay.

11 Q. --- Because -- yeah.

12 A. Yes. I see one on the right side and I  
13 see two on the left side and I see one in the middle  
14 and one on -- and two toward the bottom.

15 Q. Are you familiar with printed circuit  
16 boards?

17 A. In a general sense.

18 Q. Have you ever had an occasion to take a  
19 printed circuit board from plastic housing on any  
20 kind of device and look at it?

21 A. No, sir.

22 Q. Okay.

23 MR. WIGGINS: Do you have that?

24 MS. DALY: Uh-huh.

25 Q. (Mr. Wiggins) I show you what has been

1 marked for identification as Exhibit Number 92.

2 We are going to a different area now, Mr.  
3 Lacy -- and ask if you can identify that photograph.

4 A. It is a photograph of the front counter,  
5 to the -- I guess, left center you see a drink  
6 machine dispenser.

7 Q. Uh-huh.

8 A. And that is for drive-thru window number  
9 two.

10 Q. Okay.

11 A. On the left-hand side of the photograph  
12 you see a metal frame that I believe is actually the  
13 drink dispenser for the main dining room.

14 Remember earlier in one of my diagrams we  
15 had Pepsi, tea, coffee, Pepsi?

16 Q. Correct.

17 A. I think that's in that same -- that's that  
18 same row.

19 Then right dead in the middle of the  
20 photograph is a computer tower.

21 Q. Okay, and was that computer tower in that  
22 location when you first went to the restaurant on  
23 January the 26th, 2012?

24 A. It was.

25 Q. And did you make any effort to examine

1     that CPU?

2             A.     I examined the exterior of it, yes, sir.

3             Q.     Did you look to see if there were any hard  
4     drives in that CPU?

5             A.     They had been removed.

6             Q.     Did you observe that on your own or did  
7     someone like Agent Lacy tell you they had been  
8     removed?

9             A.     I observed it on my own.

10            Q.     Did anybody later tell you who had removed  
11     them?

12            A.     Fayetteville Police Department.

13            Q.     Who told you that?

14            A.     Special Agent Royal.

15            Q.     And did you have an occasion at some point  
16     to meet Detective House ---

17            A.     --- I did.

18            Q.     --- Of the Fayetteville Police Department?

19            A.     I did.

20            Q.     And did Special Agent Royal tell you that  
21     he had taken possession of those items?

22            A.     Who is he?

23            Q.     Mr. House, Detective House.

24            A.     Yes, sir.

25                    MS. DALY:   It is almost noon.

1 Can we go off record?

2 MR. WIGGINS: Sure.

3 (11:54 a.m.-12:45 p.m. - Luncheon recess)

4 Q. (Mr. Wiggins) Mr. Lacy, when we dropped  
5 off we were talking about some of the photographs and  
6 identifying those ---

7 A. --- Yes, sir.

8 Q. --- Before the lunch break. I'm just  
9 going to show you Exhibit Number 107 and ask if you  
10 can identify that document.

11 A. Yes, sir. These are the two hard drives  
12 removed from the computer towers that were  
13 illustrated in an earlier photograph.

14 Q. Okay, and did you finally obtain -- excuse  
15 me -- obtain possession of these hard drives?

16 A. I did.

17 Q. And you obtained those from the --  
18 Detective House ---

19 A. --- I did.

20 Q. --- Of the Fayetteville Police Department.  
21 And after you learned that Mr. House had  
22 taken these hard drives, did you contact him about  
23 that, about the hard drives?

24 MS. DALY: Objection to form.

25 MR. WIGGINS: You can answer if you

1 know.

2 THE WITNESS: No. I'm -- I'm trying  
3 to remember exactly how it played out. He was at the  
4 fire -- he came to the fire scene. Let me backtrack.

5 Chad Royal had told me that House had  
6 them. House then came to the fire scene. I asked  
7 him what he was going to do with them. And to the  
8 best of my knowledge, his answer was I don't know.  
9 And I asked him if he would voucher them over to me  
10 and allow me to have them examined. He said yes. He  
11 said that would be a great idea.

12 And I think it was more the tone of his  
13 voice than what he said. I then asked him why. And  
14 he said his IT people had told him it would be months  
15 before they could look at them and he didn't want to  
16 wait months. And I just said I'm comfortable I can  
17 get it done faster.

18 Q. (Mr. Wiggins) Did he tell you or give you  
19 any indication of what he thought was contained on  
20 the hard drives?

21 A. Yes. From the very beginning I  
22 understood, and I believe he understood, and I  
23 believe Chad Royal understood it contained video  
24 files from the surveillance cameras.

25 Q. Okay. After you obtained -- when you --



1 I'm sorry. Strike that.

2 When you obtained these files, did you  
3 sign a evidence receipt form for Detective House?

4 A. I did.

5 Q. Acknowledging you had received these  
6 documents?

7 A. I did.

8 Q. I mean -- I'm sorry -- these hard drives?

9 A. Yes, sir.

10 Q. Did you ever deliver those back to  
11 Detective House?

12 A. I did not.

13 Q. Has he ever requested you deliver them  
14 back to him?

15 A. He did not.

16 Q. Did he ever -- did Detective House ever  
17 have any further conversation with you in reference  
18 to these hard drives after you signed the receipt to  
19 take possession of them?

20 A. Not that I recall.

21 MR. WIGGINS: Excuse me. Do you  
22 have a copy? Did I give you that?

23 Q. (Mr. Wiggins) I show you what has been  
24 marked as Plaintiff's Exhibit Number 100 and ask if  
25 you can identify that photograph.

1           A.     It's a photograph of the office. As you  
2 go in the door from the rear hallway, this would be  
3 the office to the right.

4           Q.     Okay, and was that the operating office as  
5 you observed it for the restaurant?

6           A.     Well, there were two rooms. One would be  
7 the one illustrated in the photograph. The other  
8 room would be behind the photographer. I don't know  
9 the exact purpose of each room. But between those  
10 two rooms, they constituted the office.

11          Q.     And on the top -- you see the top -- the  
12 door has been demolished or partly demolished. Do  
13 you see that?

14          A.     Yes, sir.

15          Q.     Was that done during the fire suppression  
16 activities or was it fire damage? Could you tell?

17          A.     That is a -- that's a fire pattern ---

18          Q.     --- Okay.

19          A.     --- On the door.

20          Q.     What are the dark areas there, Mr. Lacy,  
21 on this photograph? Does it have any significance at  
22 all?

23          A.     Dark areas where?

24          Q.     I'm sorry. On the door, above the door.

25          A.     That's smoke staining.

1           Q.     Okay, and is this -- these lines by the  
2     left margin of the photograph, is that also smoke  
3     staining?

4           A.     It is.

5           Q.     Okay. In the upper right-hand corner of  
6     this photograph is a machine of some description.

7                     Do you recognize that?

8           A.     I now know that to be the DVR on which the  
9     video files for these surveillance cameras were  
10    recorded.

11          Q.     Okay. Do you see the wiring coming out of  
12    the ceiling panel going to that DVR?

13          A.     I see some wiring. I do not see where it  
14    connects to the DVR simply because of the angle of  
15    the photograph.

16          Q.     Okay.

17          A.     But I see some wiring.

18          Q.     Okay. And to the right of that DVR do you  
19    see another device of some description?

20          A.     Is that the device that's hanging down at  
21    a 45-degree angle?

22          Q.     No. I'm sorry. I'm -- which one are you  
23    speaking of now? Let's be sure.

24                     Okay, what have you identified as the DVR?

25          A.     This right here.

1 Q. Okay. Yeah, with the thing hanging down.

2 A. I have no idea what that is.

3 Q. Okay. And, then, the machine to the left  
4 of the DVR, do you recognize that?

5 A. I do not know what that is, sir.

6 Q. Did you ever examine it during any of your  
7 investigation?

8 A. It was taken as evidence in November of  
9 2012 and examined in Raleigh in April of 2013.

10 Q. Okay, and was that at Mr. Cavaroc's  
11 laboratory in Raleigh?

12 A. It was.

13 Q. And do you know who took possession of  
14 this?

15 A. Mr. Cavaroc.

16 Q. Okay. And Mr. Cavaroc was the engineer  
17 representing the Public Works Commission of the city  
18 of Fayetteville?

19 A. He was.

20 Q. Did you know Mr. Cavaroc prior to this  
21 occasion?

22 A. I did.

23 Q. Have you worked with him before?

24 A. Yes.

25 Q. And I also -- I see some wiring going to

1     that device, now, from this photograph. But you  
2     didn't examine that either, I take it.

3           A.     That wiring would have been examined in  
4     Raleigh in April. But, no, I did not examine it at  
5     the fire scene in January.

6           Q.     Okay. Was that wiring taken and was it  
7     present at the conference that was held in Mr.  
8     Cavaroc's laboratory in 2013?

9           A.     It was.

10          Q.     When you examined the office, Mr. Lacy,  
11     was there personal items of Jimmy Diamantopoulos in  
12     the rest -- in the office? Do you recall any of  
13     those items?

14          A.     I'm not real sure what would be  
15     characterized as personal. I mean, I -- there were  
16     -- there were furnishings and personal property,  
17     business personal property in the offices. But I'm  
18     not real sure if I know what was personal and what  
19     was not.

20          Q.     Okay. Did you see any photographs in the  
21     office?

22          A.     I do not remember.

23          Q.     Okay. Hockey stick?

24          A.     I do remember seeing a hockey stick.

25          Q.     Okay.

1 A. That -- that....

2 Q. I show you what has been marked as Exhibit  
3 101, which is a -- it's just a closeup of what I just  
4 showed you. And, again, on the upper left-hand --  
5 right-hand corner of this photograph is what you have  
6 previously identified as the DVR. Is that correct?

7 A. Yes, sir.

8 Q. And then to the left of that is the audio  
9 system that was taken by Mr. Cavaroc.

10 A. I did not specifically remember it was the  
11 audio system. But, yes, that item was taken by Mr.  
12 Cavaroc.

13 Q. And it was present at the examination that  
14 was conducted at his laboratory in Raleigh.

15 A. It was.

16 Q. And that part of that DVR system that's  
17 hanging down, you don't -- you didn't -- you don't  
18 recognize what that is?

19 A. No, sir.

20 Q. Was that the position that it was in when  
21 you saw it ---

22 A. --- Yes, sir.

23 Q. --- When you were in the restaurant in  
24 January the 26th, 2012?

25 A. Yes, sir.

1 Q. And did you also photograph this item?

2 A. Yes, sir.

3 Q. Had you ever seen a DVR system like this  
4 before?

5 MS. DALY: Objection to form.

6 THE WITNESS: Not that I'm aware of.

7 MR. WIGGINS: Okay.

8 Q. (Mr. Wiggins) You -- when you saw this,  
9 did you know what it was?

10 A. No, sir.

11 Q. Did you inquire of Jimmy what it was?

12 A. No, sir.

13 Q. Did you ever have any discussions at all  
14 with Jimmy concerning this DVR?

15 MS. DALY: Objection to form.

16 THE WITNESS: Indirectly, yes.

17 MR. WIGGINS: Okay.

18 THE WITNESS: On January 26th,  
19 January 27th, and let's include January 30th, the  
20 following Monday, Detective House, Special Agent  
21 Royal, and I had multiple conversations regarding the  
22 surveillance system and the cameras. We all thought  
23 -- and I thought because they told me -- but we all  
24 thought ---

25 Q. (Mr. Wiggins) --- Well, wait a minute.

1 Be specific in ---

2 MS. DALY: --- No. Let him finish  
3 his answer.

4 MR. WIGGINS: Well, when he's  
5 talking about they, I just want to be sure who they  
6 are.

7 THE WITNESS: Okay. Both Special  
8 Agent Royal and Detective House told me individually  
9 and I believe jointly that the video files for the  
10 camera surveillance system were on the computer for  
11 which -- or from which Detective House had removed  
12 the hard drives and subsequently vouchered over to  
13 me. I never in my mind imagined that the item that I  
14 have identified in Exhibit 100 and 101 was a DVR.

15 MR. WIGGINS: Okay.

16 Q. (Mr. Wiggins) And when did you first  
17 learn that it was the DVR?

18 A. I'm going to say January or February 2013.

19 Q. Okay.

20 A. I don't remember the -- the specific date.

21 Q. Okay.

22 A. But it was well after -- it was after we  
23 were at the scene in Fayetteville in November.

24 Q. You read Jimmy Diamantopoulos' deposition.

25 A. Yes, sir.



1 Q. And do you recall what he said in the  
2 deposition about this DVR and a conversation with you  
3 concerning the DVR?

4 A. I'm afraid you've got to be more specific.

5 Q. Okay. Do you recall him saying that on  
6 January the 26th he received a phone call from you  
7 asking that you meet him at the Miami Subs  
8 restaurant?

9 A. Okay, that's correct.

10 Q. And did you do that? Did you actually  
11 call him on -- do you recall him -- calling him on  
12 that morning?

13 A. Okay, if you remember, I testified earlier  
14 that on my way to Fayetteville on January 26th I  
15 called him. I had left him a voice mail on the 25th.  
16 He did not call me back. I called him on the 26th on  
17 my way to Fayetteville. And we did not discuss the  
18 DVR in that conversation. That was the conversation  
19 where we -- where I confirmed that he could meet me  
20 at Miami Subs to let me in.

21 Q. Okay. Now, on Friday, January the 27th,  
22 did you call Jimmy at 9:22 a.m.?

23 A. I very well may have but I do not recall.

24 Q. Okay. And what is your telephone number?

25 A. 7 -- well, the number that I would have

1       used to call him on would have been 704-284-2658.

2           Q.     Okay. Do you know whose number  
3       704-677-2787 would be?

4           A.     Read that off to me again.

5           Q.     Okay. 704-677-2787. And it says ---

6           A.     --- May I confer with Ms. Daly?

7           Q.     Sure.

8                       MS. DALY: Can we go off record?

9                       MR. WIGGINS: Off record.

10                      (1:01-1:01 p.m. - recess)

11                      THE WITNESS: That is the phone  
12       number of Mike Austin of Nationwide Insurance.

13           Q.     (Mr. Wiggins) And is he -- does he live  
14       in Mooresville, North Carolina?

15           A.     I thought he lived in Huntersville or the  
16       Cornelius area. But he lives approximately 25 miles  
17       north of Charlotte. That would include Huntersville,  
18       Cornelius, Davidson, and Mooresville.

19           Q.     Do you have any idea why he would have  
20       been calling Jimmy Diamantopoulos on January 27th,  
21       2012?

22           A.     Yes, sir. That is the date that Mike  
23       Austin came to the Miami Subs fire scene. I do not  
24       know the substance of the conversation. But he would  
25       have arrived in Fayetteville at approximately 10:30.

1 And it could have been a -- well, I -- I'm not going  
2 to speculate on the conversation.

3 Q. Okay. Were you there when he arrived?

4 A. I was.

5 Q. And the purpose of his coming to the  
6 restaurant was to consult with you concerning your  
7 investigation.

8 A. No, sir.

9 Q. It was not that purpose. What was the  
10 purpose?

11 A. To meet with Mr. -- with Jimmy.

12 Q. Okay, and did you meet with Jimmy along  
13 with Mike Austin?

14 A. I met with Jimmy individually. I did not  
15 meet with Jimmy and Mike.

16 Q. Okay. Did you ever learn what the subject  
17 of the conversation was between Mike and Jimmy?

18 A. I probably know what one subject was.

19 Q. Okay, and what was that?

20 A. That the -- the case was being transferred  
21 from Mike Austin to Mike -- to -- one moment, please.

22 Q. Jezierski?

23 A. Yes, sir. Thank you. Mike -- but I was  
24 trying to remember his first name. Is it Mike?

25 Q. Yeah, Mike Jezierski.

1           A.     Okay.  Mike -- it was -- Mike Austin -- on  
2     Thursday the file was transferred from Zak Gurley to  
3     Mike Austin.

4           Q.     Okay.

5           A.     On late Thursday -- on Thursday morning it  
6     was transferred.  On late Thursday afternoon or  
7     Friday morning it was determined that it was going to  
8     be transferred to Mike Jezierski.  And Mike Austin  
9     decided to drive to Fayetteville to tell Jimmy that,  
10    as opposed to telling him on the phone, drive to  
11    Fayetteville and tell him in person.

12          Q.     And what time of the day on the 27th did  
13    he arrive?

14          A.     Approximately 10:30.

15          Q.     Okay, and was Jimmy there then or did he  
16    come later?

17          A.     I believe he was there.

18          Q.     Okay, and was anyone else there besides  
19    you and Jimmy when he arrived?

20          A.     Special Agent Royal would have been there.  
21    And I believe representatives of the agent, the  
22    insurance agent arrived before Mr. Austin.  I don't  
23    recall if Mr. Takis was there.  I think that's it.

24          Q.     Okay.  And in any event, going back to the  
25    deposition of Jimmy Diamantopoulos, he said he

1 recalled on the morning of the 27th that you came to  
2 him with the DVR in your hands and that you asked him  
3 what it was. Did that ever happen?

4 A. No, sir.

5 Q. Did you ever have any conversation, to  
6 your recollection, with Jimmy concerning that DVR?

7 A. No, sir.

8 Q. Did you ever hear Jimmy call and talk to  
9 Bob Dowlat about downloading any information from the  
10 DVR surveillance system?

11 A. No, sir.

12 Q. Did Jimmy ever give you the telephone  
13 number of Bob Dowlat whom he said you could call to  
14 get information on how to download the video system?

15 A. No, sir.

16 Q. Did you ever have a convers -- did you  
17 ever hear Jimmy in a conversation with Bob Dowlat  
18 asking him about downloading, again, the information  
19 from the DVR system?

20 A. No, sir.

21 Q. You have read the deposition of Jimmy  
22 Diamantopoulos and you recall that his testimony was  
23 in opposition to what you've just testified to.

24 A. Yes, sir.

25 MS. DALY: Objection to form.

1 THE WITNESS: Yes, sir.

2 Q. (Mr. Wiggins) Is that correct?

3 A. Yes, sir.

4 Q. But then, again, you're telling me today  
5 that that conversation never occurred.

6 A. Yes, sir, I am.

7 Q. When you were at the restaurant, Mr. Lacy,  
8 did you see the cameras that were positioned  
9 throughout the interior and exterior of the Miami  
10 Subs restaurant?

11 A. I did.

12 Q. And did you count them?

13 A. I don't ever believe I counted all of  
14 them, no, sir.

15 Q. Okay. Was there one in the area where the  
16 -- what you and I have previously identified as  
17 drive-thru window number one?

18 A. I never saw one. So I don't know for  
19 sure.

20 Q. Okay. On the 27th of January when you  
21 were there -- and we're -- I'm jumping back again  
22 now. When you -- we talked about it this morning  
23 when you initially walked through the restaurant you  
24 did that without a camera, without making any notes.  
25 Is that correct?

1 A. Yes, sir.

2 Q. Then you came back. And then what did you  
3 do?

4 A. Photographed it.

5 Q. Okay, and those were the photographs that  
6 you've identified earlier that are attached to your  
7 deposi -- to your federal report -- or some of those  
8 are attached to your federal report.

9 A. Okay, those -- the photographs that I have  
10 identified both in my May 2012 report to Nationwide  
11 and in my federal report contain photographs taken on  
12 January 26, January 27th, and possibly January 30th.

13 Q. Okay.

14 A. So I don't want to limit it to just the  
15 26th.

16 Q. Okay.

17 A. All three dates.

18 Q. All right, but you did take some of the  
19 photographs on January the 26th.

20 A. Without -- I probably took the majority on  
21 the 26th.

22 Q. Okay, and some of those photographs have  
23 been attached to your -- either your letter of May  
24 2012 or your federal report in 2013.

25 A. Yes, sir.

1 Q. After you photographed the restaurant,  
2 then what did you do?

3 A. I believe that's when I started taking  
4 measurements of the seating area and the game room,  
5 working from the front toward the back.

6 Q. Okay.

7 A. And, yeah, we went through the cooking  
8 area, the areas containing drive-thru windows one and  
9 two, and the back hall, measured that freezer that  
10 was kind of like an offset of the building, and then  
11 began looking at fire patterns.

12 Q. Okay, and when did you start -- what time  
13 of day did you start looking at the fire patterns?

14 A. I don't remember, sir.

15 Q. Okay. And again referring back to Jimmy  
16 Diaman -- the deposition of Jimmy Diamantopoulos, as  
17 I recall his testimony, Mr. Lacy, he said that on the  
18 26th of January, that late in the afternoon that he  
19 was there with you and that you were -- was walking  
20 through the restaurant and that you showed a -- shown  
21 a -- had a flashlight and you showed a flashlight on  
22 the circuit board at the location where Agent Royal  
23 had placed it. Do you recall him saying that?

24 A. No, sir.

25 Q. Okay. Did you -- do you recall that being



1 in his deposition?

2 A. Not off the top of my head.

3 Q. Okay.

4 A. No, sir.

5 Q. Did that ever happen?

6 A. No, sir.

7 Q. Did you ever walk through the restaurant  
8 with a flashlight with Jimmy?

9 A. I'm sure I did.

10 Q. Okay, but you have no recollection of  
11 having looked at a circuit board that was lying  
12 against the wall below the window of takeout window  
13 number one?

14 A. No, sir. I remember the circuit board as  
15 already being on a counter top.

16 Q. On -- when you completed your -- when did  
17 you -- what did you complete on the first day that  
18 you were there?

19 Again, I'm having it -- relating it to  
20 your origin-and-cause investigation.

21 A. Some interviews ---

22 MS. DALY: --- Objection to form.  
23 You can answer.

24 THE WITNESS: Some interviews, most  
25 of the photography, most of the diagraming was done

1 on the 26th, most if not all, and some of the  
2 examination of the fire patterns.

3 MR. WIGGINS: Okay.

4 Q. (Mr. Wiggins) And we've talked some about  
5 the fire -- somewhat about fire patterns earlier.  
6 But in an origin-and-cause investigation you develop  
7 hypotheses, do you not?

8 A. Yes, sir.

9 Q. And is fire patterns a hypothesis that you  
10 look at or you develop along in your -- with your  
11 investigation?

12 MS. DALY: Objection to form of the  
13 question.

14 THE WITNESS: I use fire pat -- fire  
15 patterns in my evaluation of the fire patterns to  
16 assist in the development of the hypothesis but the  
17 fire patterns are not the hypothesis itself.

18 MR. WIGGINS: Okay.

19 Q. (Mr. Wiggins) They aid -- they sometimes  
20 can aid the hypothesis, can they not?

21 A. Yes, sir.

22 Q. And you realize and understand that  
23 sometimes fire patterns can fool an investigator, can  
24 they not?

25 MS. DALY: Objection to form.

1 Q. (Mr. Wiggins) As you've experienced in  
2 your career.

3 MS. DALY: Objection to form.

4 THE WITNESS: Sometimes, yes.

5 MR. WIGGINS: Okay.

6 Q. (Mr. Wiggins) And what time did you leave  
7 the restaurant on the 26th?

8 A. Approximately six p.m.

9 Q. This would be in January, so it would have  
10 been getting dark at six p.m.

11 A. It was -- it was dark.

12 Q. It was dark.

13 And you came back on the following day?

14 A. Yes, sir.

15 Q. And did you notify Nationwide that you  
16 were going to go back to the restaurant on the  
17 subsequent day of January the 27th?

18 A. I don't remember.

19 Q. Okay. Did you -- what -- typically when  
20 you are given an assignment by in this case  
21 Nationwide, do you quote a budget for an O&E -- a --  
22 an origin-and-cause investigation?

23 A. No, sir.

24 Q. Would you have been authorized to go back  
25 on a second day without notifying Nationwide?

1 A. Yes, sir.

2 Q. As part of the scope of your  
3 investigation?

4 A. Yes, sir.

5 Q. And you did return on the 27th of January.

6 A. I'm sorry. I did not understand.

7 Q. You under -- you returned on the 27th of  
8 January.

9 A. Yes, sir, I did.

10 Q. And, again, what time did you arrive on  
11 the 27th?

12 A. I think it was about 10 o'clock.

13 Q. Okay, and Jimmy was there to let you in?

14 A. He was.

15 Q. Had you called him and asked him to do  
16 that?

17 A. No, sir. I think we reached that  
18 agreement on the afternoon of the 26th before I left.

19 Q. Okay, and was there anyone else at the  
20 restaurant when you arrived about 10 o'clock on the  
21 27th?

22 A. I think Special Agent Royal was already  
23 there.

24 Q. Okay, and was he doing any work that you  
25 could observe when you got there?

1 A. No, sir.

2 Q. Had you previously arranged for Detective  
3 Royal to be present on the 27th?

4 A. Not specifically.

5 Q. Okay. He just happened to show back up on  
6 that date?

7 A. When I spoke to him on the 26th, he said  
8 he wanted to come back out to the fire scene and I  
9 said fine. I don't know that we had another  
10 conversation about the 27th.

11 Q. Okay. At that point in time Agent Royal  
12 -- SBI Agent Royal had determined the fire to be one  
13 undetermined.

14 A. Yes, sir.

15 Q. And that had also been the conclusion that  
16 had been assigned by the Fayetteville police  
17 department -- I mean, the Fayetteville fire  
18 department.

19 A. I don't know that they had made a  
20 determination on the 27th.

21 Q. Okay. At some point you became aware that  
22 they did, did you not?

23 MS. DALY: Objection to form.

24 THE WITNESS: Only by review of the  
25 fire report.

1 MR. WIGGINS: Okay.

2 Q. (Mr. Wiggins) Did you review the fire  
3 report?

4 A. I did.

5 Q. And did it determine the fire at the Miami  
6 Subs restaurant to be undetermined?

7 A. That's what the fire report shows, yes,  
8 sir.

9 Q. Okay, and did you look at the police  
10 report filed by Detective House?

11 A. Yes, sir.

12 Q. And did it also classify the fire as being  
13 undetermined?

14 A. I don't remember a specific sentence, but  
15 in a general sense, yes.

16 Q. Now, when you went back on the 27th, and  
17 with Detective -- SBI Agent Royal being present, did  
18 you and he jointly continue the investigation?

19 A. We did.

20 Q. And what did you do on that day?

21 A. I spent most of the 27th either  
22 interviewing employees or working in the area of  
23 drive-thru window number one.

24 Q. Okay. Now, I have your notes that we have  
25 identified early on, and I'm not going to mark these

1     because I don't have them -- I can't mark them as an  
2     exhibit because I can't let them go right now. But  
3     you have notes in here of their interviews, do you  
4     not?

5             A.     Yes, sir.

6             Q.     Look at the -- do you have this before you  
7     here, the one with Jimmy Diamantopoulos at the top?

8             A.     Yes, sir, I do.

9             Q.     Okay, and what is -- what was the day that  
10    you wrote this?

11            A.     January 26th.

12            Q.     Okay. I'm sorry but I -- is it on here  
13    and I'm ---

14            A.     --- No, sir, it's not.

15            Q.     Okay. I'm sorry. I didn't -- probably  
16    didn't see it.

17                    The managers you have identified on here  
18    as being Tori Moon, James McDonald, and Joel  
19    somebody?

20            A.     Yes, sir.

21            Q.     You interviewed Tori Moon?

22            A.     I did.

23            Q.     And did you interview James McDonald?

24            A.     I do not believe so.

25            Q.     Okay. Then on -- the next one we have is

1 Lewis Hardin Construction. Was he there on the 26th  
2 or 27th of January? Is it noted on your report here?

3 A. His presence on the fire scene is not  
4 noted. The notation in my notes is because he  
5 renovated the building in 2010.

6 Q. Okay. Do you know why he was there?

7 A. Why he was there when?

8 Q. I'm sorry. Maybe I'm misunderstanding.

9 Is this the result of an interview that  
10 you had with Lewis Hardin?

11 A. No, sir. This is page two of the  
12 interview notes of Jimmy.

13 Q. I'm sorry. Okay, he told you that Lewis  
14 Hardin had renovated the restaurant in 2010.

15 A. '10.

16 Q. And he gave you the cost of that, I take  
17 it, here?

18 A. Yes, sir.

19 Q. And there's a claim filed with State Farm.

20 A. Yes, sir.

21 Q. And some other miscellaneous information  
22 that you obtained from him on that date. Correct?

23 A. Yes, sir.

24 Q. Okay. And then the next one you have is  
25 John Pavlikianidis -- is a guess. Is that correct?



1 A. John. His last name starts with a P.

2 Q. Okay. And there's no interview notes  
3 here. He was the maintenance man, you've got here.

4 A. Yes, sir.

5 Q. And you conducted no interview with him.

6 A. No, sir.

7 Q. And then you got Mrs. Moon next, Victoria  
8 Moon.

9 A. Yes, sir.

10 Q. You did interview her.

11 A. I did.

12 Q. And is this the notes from your interview  
13 with her?

14 A. It is.

15 Q. And was this done on the 27th of ---

16 A. --- 20 -- 26th.

17 Q. 26th of January?

18 A. Yes, sir.

19 Q. She said that she worked for Miami Subs  
20 before. When she said before, was that -- means  
21 prior to a reopening in 2011?

22 A. She worked for Miami Subs in Florida  
23 before she moved to North Carolina. She worked at  
24 Miami Subs before the vandalism claim. She worked at  
25 other stores during the renovation and then worked at

1 Miami Subs after it reopened.

2 Q. Okay. And she gave you a synopsis of the  
3 damage that had been sustained by the restaurant as a  
4 result of the vandalism claim that was made back in  
5 2010?

6 A. Yes, sir.

7 Q. She said business was good. She gave you  
8 the deposits, average deposits. Is that what she  
9 gave you there?

10 A. Yes, sir.

11 Q. And said she had no personal problems.

12 A. No, sir, that's not what she said.

13 Q. I'm sorry.

14 A. No personnel problems.

15 Q. I'm sorry. No personnel problems. I'm  
16 sorry -- and then the date. And then next is the  
17 hours of operation when she operated the restaurant  
18 from 00 -- from, I guess, midnight to four o'clock  
19 a.m.?

20 A. That is a reference to when they have law  
21 enforcement officers on the property.

22 Q. Okay. Is the next page continuing your  
23 interview with Mrs. Moon?

24 A. It is.

25 Q. And did you talk to her about the

1 surveillance system -- the monitoring system for the  
2 surveillance system?

3 A. I did. And I believe that comes up on the  
4 27th.

5 Q. Okay. Was that a separate interview with  
6 Mrs. Moon?

7 A. Yes, sir.

8 Q. And is it in -- contained in your reports  
9 here, too?

10 A. Yes, sir, it is.

11 (Witness examined document)

12 A. Go to a page that has 10-30-11 across the  
13 top.

14 Q. Okay, I got it.

15 A. That is the continuation of my interview  
16 with Tori.

17 Q. Okay.

18 A. And this -- this part of the interview  
19 occurs on the 27th.

20 Q. Okay, and I see the note that she made  
21 here. The only thing that is different -- I -- the  
22 only thing different is that cams were off.

23 A. Yes, sir.

24 Q. Was she talking about the monitoring  
25 systems?

1 MS. DALY: Objection to form.

2 MR. WIGGINS: If you know.

3 THE WITNESS: Tori and others,  
4 meaning employees, Raven, Joseph, Duenes, all made  
5 the observation the cameras were off.

6 MR. WIGGINS: Okay.

7 THE WITNESS: In reading transcripts  
8 in the intervening months I've come to understand  
9 that maybe the cameras were on but the monitor in the  
10 office was off.

11 MR. WIGGINS: Okay.

12 THE WITNESS: But in January of  
13 2012, if I wrote cams, they told me cam -- and that's  
14 my abbreviation.

15 MR. WIGGINS: I understand.

16 THE WITNESS: They told me cameras,  
17 because, now, I -- if -- if they had said monitors, I  
18 would have written monitors or mons -- m-o-n-s.

19 MR. WIGGINS: Right.

20 THE WITNESS: Because I'll  
21 abbreviate at the drop of a hat. But if they said --  
22 if I wrote cams, they said cameras.

23 MR. WIGGINS: Okay.

24 Q. (Mr. Wiggins) And -- but you did come to  
25 understand that there were two monitors in the

1 restaurant, did you not?

2 MS. DALY: Objection to form.

3 MR. WIGGINS: Well, let me strike  
4 that.

5 Q. (Mr. Wiggins) Did you ever see the two  
6 monitors in the restaurant?

7 A. In the restaurant or in the office?

8 Q. Well, I think one was in the restaurant  
9 and one was in the office.

10 A. I was aware of a monitor in the office.

11 Q. Okay.

12 A. I was not aware of a monitor in the  
13 restaurant.

14 Q. Okay. So that day -- that is, the 27th --  
15 you spent most of the day, then, interviewing various  
16 persons. Is that....

17 A. Like I say, most of the day. But I spent  
18 some time.

19 Q. Okay, and those persons that you  
20 interviewed was -- Paul McKinnon was one, was he not?

21 A. I don't recall interviewing Mr. McKinnon.

22 Q. Okay. He picked up -- he's the guy that  
23 picked up the trash.

24 A. Yes, sir.

25 Are you looking at a page with his name

1 across the top?

2 Q. I am. I am.

3 A. That is a continuation of my interview of  
4 Tori.

5 Q. Okay.

6 A. So I -- no, I don't think I've talked to  
7 him.

8 No, this is a -- this is a continuation of  
9 the interview with Tori.

10 Q. Okay. And you asked -- you were asking  
11 her about the finances of the restaurant, were you  
12 not, in the ---

13 A. --- I think I was asking her more about  
14 procedures. I mean, obviously I did, because  
15 somewhere -- I mean -- well, I've asked her about  
16 both, how things -- who did what, how things were  
17 handled. And dollar amounts did come up, yes.

18 Q. Did you ever talk to Jimmy about any of  
19 these issues that you discussed with Mrs. Moon?

20 A. No, sir.

21 Q. And, then, the last page of your interview  
22 of Mrs. Moon, it says Jimmy does not always what?

23 A. Arm.

24 Q. System in a.m.?

25 A. Yes, sir.

1 Q. Okay, and do you know what she had  
2 reference to when she was speaking about that?

3 A. Yes, sir. Let me look back at one other  
4 thing before I answer.

5 (Witness examined document)

6 A. Tori opens on Saturday and Sunday. She  
7 works Monday to Thursday nights, off on Friday, opens  
8 on Saturday and Sunday. When she comes in on  
9 Saturday and Sunday the alarm system is typically --  
10 let me rephrase that. She found the alarm system  
11 typically off, meaning not armed.

12 And in response to a question she said  
13 when Jimmy comes in and gets the deposit and leaves  
14 he does not activate the system.

15 Q. That's in the a.m.

16 A. Yes, sir. So that's my statement there.  
17 Jimmy does not always arm system in a.m.

18 Q. Okay. And, then, the notation just below  
19 that says wiring for old equipment was present.

20 A. Yes, sir.

21 Q. What was that in reference to?

22 A. Video surveillance and alarm system.

23 Q. Okay. And Mrs. Moon told you that.

24 A. Yes, sir.

25 Q. There has been some talk and some

1 testimony by other witnesses, Mr. Lacy, that said the  
2 -- there was a plug in the office unplug -- un --  
3 pulled out, that was not plugged in for an old video  
4 system. Do you recall that?

5 A. I do not recall seeing a cable that was  
6 not plugged in at the scene. I do recall  
7 observations and statements made in April of this  
8 year that the old system was not plugged in.

9 Q. And, then, the statement just below that  
10 was no new equipment at first window. What was that  
11 in reference to?

12 A. No new equipment was installed at the  
13 first drive-thru window during the renovations.

14 Q. Okay, and did Mrs. Moon tell you that?

15 A. Yes, sir.

16 Q. And did she not mention to you that there  
17 was this Ion IQ system present at that window which  
18 was electrically operated?

19 A. No, sir, she did not.

20 Q. Did you ask her about that?

21 A. No, sir.

22 Q. The next interview you had was with Joseph  
23 Owens. Would that be ---

24 A. --- No, sir.

25 Q. --- What I'm looking at correctly?



1           A.     Well, that's not the next interview. But  
2     the last page of my notes is an interview of Joseph  
3     Brandon Duenes -- D-u-e-n-e-s.

4           Q.     Okay, and this was also on the 27th of  
5     January?

6           A.     Yes, sir.

7           Q.     He was the assistant manager?

8           A.     Yes, sir.

9           Q.     He talked about financial issues, behind  
10    on payroll. Do you recall that?

11          A.     Yes, sir.

12          Q.     Owes four checks as of 1-30-12?

13          A.     Yes, sir.

14          Q.     Normal payday is Monday, did not pay him  
15    on January 23rd?

16          A.     Yes, sir.

17          Q.     He has check on 1-16-12, didn't cash it.  
18    Is that what he says?

19          A.     No. That is my notes of Jimmy told him  
20    not to cash it.

21          Q.     Okay. Paid \$600 to produce man, and then  
22    under that it has got approximately \$3,100. What  
23    does that mean? What is that in reference to?

24          A.     The cost of the delivery was \$3,100.  
25    Jimmy had \$2,500 cash. Mr. Duenes paid -- gave Jimmy

1     600. So Jimmy -- Mr. Duenes -- Duenes' 600 and  
2     Jimmy's 2,500 totals 3,100, which was paid to the  
3     produce man.

4             Q.     Okay. And then he goes on to say that  
5     Friday before the fire that he paid, cut back on,  
6     dumpster removed two months ago.

7             A.     Can ---

8             Q.     --- That ---

9             A.     --- Can I ---

10            Q.     --- That was told ---

11            A.     --- Can I explain that?

12            Q.     Sure.

13            A.     On the Friday before the fire the natural  
14     gas service was cut off for nonpayment of a bill.  
15     Mr. D. -- or Jimmy ran to Natural -- Piedmont Natural  
16     Gas, paid it. They came back out and cut it back on.  
17     That's all the deals with the natural gas service.

18            Q.     Okay.

19            A.     A separate issue, part of the same  
20     conversation, the dumpster had been removed two  
21     months ago.

22                    Now, if you will go back a couple of pages  
23     in my notes to where you saw Mr. McKinnon's name --  
24     well, it's in my notes of the interview of Tori.

25            Q.     Mr. McKinnon's name. I see it.

1           A.     All right, hang on.  You -- you got to it  
2     faster than I did.

3           Mr. McKinnon was being paid by cash by  
4     Jimmy to pick up the trash.  And that's where you see  
5     the note picked up trash at 0700.  And that happened  
6     to be on the day of the fire.

7           Q.     Okay.  That is, Paul McKinnon that picked  
8     up the trash at the restaurant at seven o'clock on  
9     the day of the fire.

10          A.     Yes, sir.  And then that's his phone  
11     number.

12          Q.     Did he tell you how long he had been doing  
13     that?

14          A.     Several months.

15          Q.     In your conversations with Jimmy did you  
16     discuss with Jimmy his financial situation ---

17          A.     --- Not any ---

18          Q.     --- As he observed it?

19          A.     No, sir.

20          Q.     And did you ever ask Jimmy anything about  
21     his finances directly?

22          A.     I did not.

23          Q.     Did you ever learn that Jimmy had paid to  
24     Riddle, Joe Riddle, his lessor, \$6,000 the night  
25     before the fire?

1 MS. DALY: Objection.

2 THE WITNESS: I think I became aware  
3 of that when I started looking at transcripts.

4 MR. WIGGINS: Okay.

5 Q. (Mr. Wiggins) But not before?

6 A. And I think the easiest way to identi --  
7 to answer the question is I learned about it in 2013,  
8 but not in 2012.

9 Q. Okay, and did you also learn in 2013 that  
10 the week before the fire that he had paid to Mr.  
11 Riddle \$6,000 towards his taxes for 2011?

12 A. I remember seeing that in the transcript.

13 Q. The hard drives that you recovered from  
14 Detective House, you took possession of those.

15 A. Yes, sir.

16 Q. And you took those back to Char -- to your  
17 office in Charlotte.

18 A. Yes, sir.

19 Q. And you subsequently had discussions with  
20 Nationwide representatives in reference to those hard  
21 drives, did you not?

22 A. I did.

23 Q. And you subsequently downloaded the  
24 information on those hard drives.

25 MS. DALY: Objection to form.

1 THE WITNESS: I did not.

2 Q. (Mr. Wiggins) Did you ---

3 A. --- I -- I took them to a third-party  
4 vendor, instructed him to copy the hard drives to an  
5 external hard drive and examine the external hard  
6 drive, examine the copy and tell me what was on it.

7 Q. Okay, and did that actually happen?

8 A. It did.

9 Q. And you obtained permission from  
10 Nationwide to pay for getting that done?

11 A. Actually Nationwide paid him.

12 Q. Directly?

13 A. I -- he -- the vendor forwarded the  
14 invoice to me. I forwarded the invoice to Mike  
15 Jezierski.

16 Q. Okay, and did the downloaded information  
17 -- was that furnished to your office?

18 A. It was.

19 Q. It was?

20 A. Yes, sir.

21 Q. And did you then download it to see what  
22 was on the hard drive?

23 MS. DALY: Objection to form.

24 Q. (Mr. Wiggins) What was downloaded -- I'm  
25 sorry. I misstated that -- what was downloaded from

1 the hard drive.

2 MS. DALY: Objection to form.

3 THE WITNESS: The two hard drives  
4 turned out to be identical. One was a mirror image  
5 of the other.

6 Q. (Mr. Wiggins) Would it have been a backup  
7 ---

8 A. --- Yes, sir.

9 Q. --- To the other?

10 A. Yes, sir. I instructed the vendor to copy  
11 them to the hard drive, to the external hard drive.  
12 I did plug the external hard drive into my laptop and  
13 I looked at the files. I did not look at the files  
14 on the hard drives removed from the computers. I  
15 looked at the files on the external hard drive which  
16 was the copy.

17 Q. Okay, and this would have been information  
18 from the POS system in the restaurant.

19 A. Yes, sir.

20 Q. And that's what you determined it to be.

21 A. Yes, sir.

22 Q. And it was a recording or a recordation of  
23 the monies that went through the cash register  
24 through the POS system?

25 A. Yes, sir.

1 Q. And did you furnish that information to  
2 Mike Jezierski?

3 A. What I told Mike was there were no files  
4 on the hard drive of investigative value to me.

5 Q. Okay.

6 A. And -- and -- and I specifically said no  
7 video files. And I said there's nothing on there of  
8 value to me.

9 Q. Okay, and did you furnish the other  
10 information to Mike Jezierski that you had downloaded  
11 from that hard drive?

12 MS. DALY: Objection to form.

13 THE WITNESS: I'm not real sure I  
14 understand what you mean by furnished other  
15 information.

16 Q. (Mr. Wiggins) Well, the information that  
17 was then -- that you looked at, that you reviewed,  
18 did you ever furnish that on to Jezierski?

19 A. The only thing I furnished to Mr.  
20 Jezierski was the oral explanation that I just  
21 summarized. It's POS files, nothing of any value.

22 Q. Okay. Did you tell him that it was  
23 information that had to do with the financial monies  
24 that came into the restaurant through the POS system?

25 A. I think I said POS. I don't know that I

1 said financial records of monies. I just think I  
2 said it's POS system files.

3 Q. Okay, and what did you do with the  
4 information after you looked at it?

5 A. Umm, nothing.

6 Q. And you still had it in your office ---

7 A. --- Well, it's -- when it's in my office,  
8 it's in evidence storage. And it's still there today  
9 as far as I know.

10 Q. Okay. At Donan.

11 A. Let me qualify that. At some point we  
12 provided -- I shipped a -- I had the external hard  
13 drive copied and shipped to Scott Brown. And I  
14 forget what Mr. Brown told me he was going to do with  
15 it but I think it was to provide it to Jimmy.

16 Q. Okay.

17 A. Then we received a request from Womble  
18 Carlyle to return the hard drives to you.

19 Q. And that was in 2013?

20 A. That was within the last month.

21 Q. Okay.

22 A. And maybe like within the last two or  
23 three weeks.

24 Q. All right.

25 A. I can't remember the exact date. I know



1 where there's an e-mail that would tell me they have  
2 been shipped. But I remember that it was your law  
3 firm because we were originally given a P.O. box and  
4 I said UPS won't go to a P.O. box, I need a street  
5 address, and an attorney in this firm got me a street  
6 address.

7 Q. Okay.

8 A. So the -- the actual hard drives that were  
9 taken by Detective House, vouchered over to me, are  
10 no longer in my possession.

11 Q. Okay. Now, you wound up with your  
12 interviews on the 27th of January?

13 A. Yes, sir.

14 Q. And did you form any conclusions or form  
15 any hypotheses as to how this fire had occurred as of  
16 that time?

17 A. No, sir.

18 Q. Did you have any thoughts about what was  
19 the cause and origin of this fire at that time?

20 A. On the 26th and 27th -- I can combine the  
21 two dates -- I was comfortable with the origin.  
22 Sometime on the 27th -- and I cannot be more  
23 specific. I don't recall what time exactly -- I  
24 called Henry Martini, who's an electrical engineer  
25 with Donan, and as is typical of my conversations

1 with Henry, I probably said what are you doing on  
2 Monday. And he probably replied nothing. I said can  
3 you meet me in Fayetteville.

4 Q. Okay. He is an employee of Donan, is he  
5 not?

6 A. He is.

7 Q. And he is an electrical engineer and is  
8 employed by Donan.

9 A. He is.

10 Q. And he's a full-time employee of Donan --  
11 at Donan.

12 A. He is.

13 Q. He is not independent.

14 A. Correct.

15 Q. And you called him and asked him to meet  
16 you at the restaurant on Monday.

17 A. Yes, sir.

18 Q. And do you typically -- when you have need  
19 for an engineer or someone who has greater expertise  
20 in a particular area than you do, do you typically  
21 try to do -- use someone in-house?

22 MS. DALY: Objection to form.

23 THE WITNESS: No, sir. I use  
24 someone I'm comfortable with.

25 MR. WIGGINS: Okay.

1           Q.     (Mr. Wiggins) And as far as engineers are  
2 concerned, in this instance did you feel comfortable  
3 in using Mr. Martini rather than someone independent  
4 and outside of Donan?

5           A.     I did ---

6                   MS. DALY:   --- Objection to form.

7                   THE WITNESS: I did.

8                   MR. WIGGINS: You did.

9                   THE WITNESS: And do.

10                  MR. WIGGINS: And do.

11           Q.     (Mr. Wiggins) And upon reflection would  
12 it not have been better to have gotten an independent  
13 engineer to assist you in your -- in this  
14 investigation?

15                   MS. DALY:   Objection.

16                   THE WITNESS: I saw and even today  
17 see no reason to hire any electrical engineer other  
18 than Henry Martini.

19                   MR. WIGGINS: Okay.

20           Q.     (Mr. Wiggins) Henry had only been --  
21 Henry Martini had only been at the firm for a short  
22 time prior to this fire, had he not?

23           A.     17, 18 months.

24           Q.     Okay, yeah. And you had been there for

25     ---

1 A. --- Well ---

2 Q. --- Several years.

3 A. Two and a half years.

4 Q. Two and a half years.

5 A. So he's almost a year and a half. I'm two  
6 -- so I've been there a year longer, yeah.

7 Q. Okay.

8 A. Yeah, okay.

9 Q. And -- but you were not in the same area  
10 as he was with the company.

11 A. I ---

12 MS. DALY: --- Objection to form.

13 THE WITNESS: I work out of  
14 Charlotte and he works out of Green -- Charlotte,  
15 North Carolina. He works out of Greenville, South  
16 Carolina.

17 MR. WIGGINS: Okay.

18 Q. (Mr. Wiggins) And -- go ahead.

19 A. And so you understand, that is within the  
20 same Donan region. Geographically Donan is divided  
21 into regions. South Carolina, North Carolina, and  
22 Virginia is one region.

23 Q. Okay.

24 A. So we were within the same Donan group.

25 Q. Do you have electrical engineers on the --

1 on your staff in Charlotte?

2 A. No, sir.

3 Q. Are all the electrical engineers with  
4 Donan in Greenville, South Carolina?

5 A. No, sir.

6 Q. Where are they?

7 A. There's one in Mocksville, one -- well,  
8 there is a position in Nashville. That position is  
9 currently -- well -- well, let's just say there's a  
10 position in Nashville. It was vacant. I can't tell  
11 you if it was vacant in January 2012.

12 There's an electrical engineer in  
13 Columbus, Ohio. There's an electrical engineer in  
14 Louisville, Kentucky. There is an electrical  
15 engineer in Cincinnati. There is an electrical  
16 engineer in South Bend, Indiana. There's an  
17 electrical engineer in one of the Illinois offices.  
18 Right off the top of my head I can't remember which  
19 one.

20 Q. Had you used other engineers from Donan  
21 other than Henry Martini?

22 A. No, sir.

23 Q. You asked Henry to meet you there on  
24 Monday.

25 A. Yes, sir.

1 Q. And he did meet you there on Monday.

2 A. He did.

3 Q. And when I was talking to him yesterday, I  
4 thought you all were in the same office in Charlotte.  
5 But that's not true, is it?

6 A. No, sir.

7 Q. I was mistaken if I assumed that.

8 So you -- he drove in from Greenville.  
9 You drove in from Charlotte.

10 A. Yes, sir.

11 Q. And met at the restaurant. Did you all  
12 have any other conversations about this fire other  
13 than to just ask -- asking him to meet you there on  
14 Monday?

15 A. No, sir.

16 Q. Did you -- you did not give him any  
17 thoughts that you had as to the cause of this fire.

18 A. No, sir.

19 Q. You told him that you wanted him to be  
20 present to rule out any electrical issues or problems  
21 that might be a contributing factor to this fire.

22 A. No, sir.

23 Q. You didn't tell him that.

24 A. No, sir.

25 Q. What did you tell him?

1           A.     Go back to -- and I know this sounds  
2     funny. But I probably prefaced the whole  
3     conversation -- I don't even identify myself. I dial  
4     his phone number. He answers. I say what are you  
5     doing on Monday. He recognizes my phone number. He  
6     recognizes my voice. He obviously answered nothing.  
7     I probably told him I'm at a restaurant fire in  
8     Fayetteville. I need you to look at the electrical  
9     service.

10          Q.     Okay, and he did. He came and did that.

11          A.     Yes, sir.

12          Q.     On Monday.

13          A.     And may I continue?

14          Q.     Sure.

15          A.     I probably never told him Miami Subs,  
16     meaning the name. I probably never mentioned City  
17     Grill Hospitality. I probably never mentioned Jimmy.  
18     I know I didn't mention his last name. I probably,  
19     as is the pattern, e-mailed him over the weekend what  
20     we call our field pages that had all that  
21     information. It had the project number, the date of  
22     loss. I e-mailed it to him over the weekend so when  
23     he gets ready to leave his house on Monday morning he  
24     has got an address of 552 North McPherson Church  
25     Road.

1 Q. Okay.

2 A. And that's all I -- and -- and -- and you  
3 have to understand. This is our pattern.

4 Q. Did you get permission from Mike Jezierski  
5 to obtain the services of Mr. Martini?

6 A. I believe I ran it by Mike Austin, because  
7 by then I had not spoken to Mike Jezierski, and got  
8 authorization.

9 Q. Okay, and did he ask you for a budget for  
10 that cost?

11 A. No, sir.

12 Q. In any event, on Monday you met again at  
13 the restaurant. What time did you get there?

14 A. Nine to 10 a.m.

15 Q. And was he there ---

16 A. --- Probably 10, because Henry had a  
17 further drive than I did. So....

18 Q. And when you got there was there anyone  
19 else at the restaurant besides you and Mr. Martini?

20 A. Not that I recall.

21 Q. And was -- did -- how did you get into the  
22 restaurant?

23 A. I had made arrangements with Jimmy to meet  
24 us.

25 Q. Okay, and he did meet you there on the ---



1 A. --- He did.

2 Q. And was there anyone else who came to the  
3 restaurant on that Monday, the 30th of January, other  
4 than you and Mr. Henry Martini?

5 A. Mike Jezierski came on that day.

6 Q. Okay. Did you know he was coming?

7 A. Yes. I think I learned that late Friday  
8 afternoon.

9 Q. Okay.

10 A. Detective House was supposed to come but I  
11 do not believe he did.

12 Q. Okay.

13 A. Special Agent Royal came late on the  
14 afternoon.

15 Q. Okay, and when you and Mr. Martini got  
16 there did you have any further respons -- had you --  
17 was there anything further that you needed to do for  
18 your cause -- origin-and-cause investigation?

19 A. No, sir.

20 Q. Had you essentially completed your  
21 investigation as of that time?

22 A. I don't think it would be accurate to say  
23 I had completed it. But I was at a point where I  
24 needed him to look at some light fixtures, the  
25 printed circuit boards that we've discussed

1 previously today, and some wiring that was all placed  
2 on a counter and I had held it there for him to  
3 examine. And that's what I wanted him to do.

4 And I think what we did ultimately was  
5 walked inside and I pointed that out to him and  
6 walked off and let him go do his own.

7 Q. And did you do anything else yourself on  
8 that day other than meet him there and let him do  
9 what he was going to do?

10 A. I recall photographing the unfinished  
11 portion of a porch or an addition on the McPherson  
12 Church Road side of the restaurant. I realized, I  
13 think, over the weekend I had not measured that.

14 And by the way, I do recall the name of  
15 one other person who was present there.

16 Q. And who was that?

17 A. Fire Investigator Scott Hume -- H-u-m-e --  
18 who is with Donan. He is a fire investigator in  
19 Raleigh and he is a new -- at that time he was a new  
20 investigator and he was just there observing.

21 Q. When you had gone -- when you had been at  
22 the restaurant on either the 26th or the 27th you had  
23 collected samples from the floor and determined there  
24 weren't any accelerants in the restaurant?

25 A. I collected those samples on January 27th,

1 shipped them off to the lab on -- let me check, but I  
2 believe it's the 28th.

3 (Witness examined document)

4 A. Yes, sir, I shipped them to the lab on the  
5 28th.

6 Q. Okay, and you got a response on the --  
7 February the 5th or thereabouts?

8 A. February -- yeah, I probably got a verbal  
9 phone -- a verbal call on the 5th. Correct.

10 Q. And told you that there were no  
11 accelerants ---

12 A. --- Yes, sir.

13 Q. --- Present.

14 A. Yes, sir.

15 Q. And I was going to see if I had a  
16 photograph of that.

17 In your photographs -- I don't have one  
18 here. I'm sorry.

19 Mr. Lacy, what I was going to show you was  
20 a -- was that table with the circuit boards on it and  
21 have you identify where it was. But it was -- was it  
22 out in the restaurant area?

23 A. Yes, sir.

24 Q. And ---

25 A. --- Let me look right here.

1 Q. Do you have a photograph of it?

2 MS. DALY: Sure. Let me....

3 MR. WIGGINS: Yeah. It'd help me  
4 just kind of....

5 MS. DALY: Can we go off the record  
6 just a moment.

7 MR. WIGGINS: Sure.

8 (1:56-1:59 o'clock p.m. - recess)

9 THE WITNESS: That's not to say I  
10 didn't take a picture of it. That's just to say I  
11 did not include it in my report.

12 MR. WIGGINS: Okay.

13 Q. (Mr. Wiggins) Let's identify that as  
14 being -- and we -- because we introduced the report  
15 of Mr. Martini yesterday during his deposition. So  
16 what you identified now is photograph number 33 ---

17 A. --- 33 ---

18 Q. --- That's contained in the report of  
19 Henry Martini. Would that be the -- the date of that  
20 would be?

21 A. May 23rd, 2012.

22 Q. Okay. That was his first report to  
23 Nationwide.

24 A. Yes, sir.

25 Q. I got you. Okay, so we've identified --

1 and that's -- now, is that the -- is that where that  
2 circuit board was when you first saw it?

3 A. Yes, or very close.

4 Q. Okay.

5 A. And the reason I say that is Special Agent  
6 Royal had put some items near the cash registers. I  
7 may have moved them a few inches or a few feet,  
8 because I kind of lined stuff up there for Henry to  
9 look at.

10 Q. Okay.

11 A. It would -- it's closer to where it is in  
12 this picture than anything else.

13 Q. Was there anything else that you had lined  
14 up on that table for Henry to look at?

15 A. Some wiring and ---

16 Q. --- Where did the wiring come from?

17 A. In the area of origin.

18 Q. Okay.

19 A. Some -- most of which was found by Special  
20 Agent Royal. But I think I added a piece or two to  
21 it.

22 Q. Okay.

23 A. Then I had four fluorescent light fixtures  
24 that we found on the floor in the area of origin and  
25 I placed them at the front of the restaurant for

1 Henry to look at.

2 Q. Okay, and did you see Henry Martini  
3 examine or look at the circuit boards?

4 A. I did.

5 Q. And did he -- did -- what did you see him  
6 do?

7 A. Visually examine them and take phot --  
8 photographs of them and look -- flip them over in his  
9 hands.

10 Understand. I didn't -- I wasn't standing  
11 there the entire time.

12 Q. I understand.

13 A. If I would walk by or do something, I'd  
14 see he's looking at them.

15 Q. Okay. What other items were on the table  
16 other than the wiring and the circuit boards?

17 A. I believe that would be it.

18 Q. Okay, and were the fluorescent light  
19 fixtures in a general area?

20 A. Yes, sir.

21 Q. And who had moved them and put them there?

22 A. The fluorescent light fixtures, I moved  
23 them.

24 Q. You moved them from the area of origin to  
25 the area that has been identified as -- in photograph

1 33 of Henry Martini's deposition -- report in 2012,  
2 May of 2012.

3 A. Only thing I would change would -- the  
4 fluorescent fixtures are illustrated in photograph  
5 31.

6 Q. Okay.

7 A. Not 33 -- 31 of his May 2012 report to  
8 Mike Jezierski.

9 Q. Okay. Now, after you saw him look at the  
10 circuit boards, did you see him look at anything  
11 else?

12 A. Yes, sir.

13 Q. What else did you see him look at?

14 A. I don't remember the exact order, but he  
15 looked at the -- he examined all the electrical  
16 components in the area of origin.

17 Q. Okay, and that is -- that would be in a  
18 different place from where the plate was located in  
19 photograph 33.

20 A. Yes, sir.

21 Q. And when you say he examined the wiring in  
22 the area of origin, what would he have done in  
23 reference to that examination?

24 A. Photographed it, visually examined it.  
25 And in this case, although he -- although he doesn't

1 do that on every fire scene we work, he made some  
2 notations on the electrical boxes located in the area  
3 of origin.

4 Q. I believe there were three electrical  
5 boxes in the area of or -- three other ones. Is that  
6 right -- correct?

7 A. Yes, sir. And he labeled them as one,  
8 two, and three.

9 Q. Okay. And he -- on those electrical boxes  
10 he showed some tripped -- some of the tripped -- the  
11 word escapes me. He -- some of them were tripped.  
12 Some of the switches were tripped in the boxes.

13 A. Okay. Now, understand when I say  
14 electrical boxes I'm talking about junction boxes,  
15 electrical outlet boxes in the area of origin.

16 Q. Okay. You aren't talking about the ---

17 A. --- I'm not talking about electrical  
18 panels.

19 Q. --- Electrical panels. You aren't talking  
20 about those.

21 A. No, sir.

22 Q. Okay. They're more than three electrical  
23 panels.

24 Q. Okay.

25 A. But there are three electrical boxes in



1 the area of origin. Photograph 20 of that same  
2 report illustrates elec -- what he identified as  
3 electrical box one. And I don't think there's any  
4 real system to his -- which one is one and which one  
5 is two.

6 Photograph 22 identifies receptacle two.  
7 And photograph 24, again, of his May 2012 report,  
8 identifies receptacle three. That is -- he does that  
9 simply so that a year later, two years later, five  
10 years later, if somebody says what outlet are you  
11 talking about, he can say I'm talking about  
12 receptacle one.

13 Q. Now, did you tell -- or did Mr. -- well,  
14 strike this. Let me start over again.

15 Did Mr. Martini ask you where the circuit  
16 board came from?

17 A. I'm sure he did.

18 Q. Okay, and what did you -- what would you  
19 have told him, or what do you recall telling him?

20 A. Area of origin.

21 Q. And did he tell you what that circuit  
22 board was for?

23 MS. DALY: Objection to form.

24 THE WITNESS: Did Mr. Martini?

25 MR. WIGGINS: Tell you that.

1 THE WITNESS: No, sir.

2 Q. (Mr. Wiggins) Did you tell him what that  
3 circuit board was for?

4 A. I didn't know. And I don't think he knew.

5 Q. And did you go and ask Jimmy  
6 Diamantopoulos what it was?

7 A. No, sir.

8 Q. Do you know whether or not Mr. Martini  
9 went and asked Jimmy ---

10 A. --- I do not.

11 Q. --- Diamantopoulos what it was?

12 A. --- I do not know.

13 Q. Is it your understanding that Mr. Martini,  
14 when he did his investigation, did not know exactly  
15 the location of that circuit board?

16 MS. DALY: Objection.

17 THE WITNESS: I do not know.

18 Q. (Mr. Wiggins) Do you know whether or not  
19 Mr. Martini -- well, let me put this in the  
20 affirmative.

21 You do know from your testimony just now  
22 that he did know that it came from the area of origin  
23 of the fire as you had identified it.

24 A. Yes, sir.

25 Q. Did it ever occur to you at that point,

1 Mr. Lacy, that it might have been an item that could  
2 or might have been a cause of the fire?

3 MS. DALY: Objection to form.

4 THE WITNESS: No, sir.

5 Would you please repeat -- repeat the  
6 question.

7 Q. (Mr. Wiggins) Did it ever occur to you at  
8 that point in time, when you first knew that it came  
9 from the place of origin or the area of origin of the  
10 fire, that it might or could have been an item that  
11 could have started or caused the fire?

12 MS. DALY: Objection to form.

13 THE WITNESS: No, sir.

14 Q. (Mr. Wiggins) Did you see Mr. Martini  
15 examine the fluorescent lights that you had produced  
16 and carried to the front of the restaurant?

17 A. If you are talking about the fluorescent  
18 light fixtures, yes.

19 Q. Yeah, I'm talking about the fixtures, yes.

20 And do you recall what he did in reference  
21 to those fixtures?

22 A. Looked -- looked at the connectors where  
23 the bulbs are plugged in or inserted and looked at  
24 the ballast and looked at any electrical cables that  
25 supplied electrical service to the fixture.

1           Q.     Okay.  Have you ever investigated a fire  
2     that was caused by a defect in the ballast of a  
3     fluorescent lighting system?

4           A.     Yes, sir.

5           Q.     Do you know that the only way to really  
6     test for a defect in the ballast, which is a item  
7     that controls heat going to the light, or a  
8     transformer, I suppose, for a lack of a better word,  
9     can only be examined by taking it apart and  
10    determining if there's any defects in that system?

11                   MS. DALY:  Objection to form.

12                   THE WITNESS:  I'm not aware that  
13    that's the only way, no, sir.

14           Q.     (Mr. Wiggins)  But that's the usual way,  
15    is it not?

16                   MS. DALY:  Objection to form.

17                   THE WITNESS:  I examined the light  
18    fixtures.  I saw no fire patterns on the four that I  
19    stacked out front or the two that remained in the  
20    ceiling that you showed me photographs of earlier.  I  
21    saw no evidence that the fire had originated in any  
22    of those fluorescent light fixtures.

23                   Not only did I examine the fixtures  
24    themselves, but there was no evidence that the fire  
25    originated at ceiling height anywhere in that

1 restaurant.

2 Q. (Mr. Wiggins) Okay, back to my original  
3 question, the best and most efficient way of  
4 determining if there's any defect in the ballast  
5 would have been to have them examined laboratorially  
6 by an in-depth examination, would it not?

7 MS. DALY: Objection to form.

8 THE WITNESS: Sir, part of your  
9 answer is correct. However, if there is such a  
10 defect, you are going to see it on the exterior of  
11 the housing of the ballast and the fixture. You're  
12 going to see a distinct burn pattern that tells me as  
13 a fire investigator the original heat came from this  
14 light ballast.

15 MR. WIGGINS: Okay.

16 THE WITNESS: Now, I can interpret  
17 that pattern. Then I need an electric engineer such  
18 as Mr. Martini to conduct the examination that you're  
19 talking about. And I -- I don't dispute what you're  
20 talking about. But you're talking about step three  
21 of a four-or-five-step process. And steps one and  
22 two involves an observation at the fire scene that  
23 warrants step three occurring.

24 No such observation occurred. And the  
25 observations were to the contrary. No evidence

1 occurred that the fire originated at the ceiling.  
2 And there was significant evidence that the fire  
3 originated at the floor underneath the drive-thru  
4 window number one.

5 Q. (Mr. Wiggins) But you're going to yield  
6 to the opinion of Mr. Martini in reference to whether  
7 or not there was any defect in a ballast that might  
8 or could have caused the fire.

9 MS. DALY: Objection.

10 THE WITNESS: My statement is that I  
11 am going to testify that I saw no patterns on any of  
12 six fixtures indicative of a fire originating at a  
13 light fixture. And I asked Mr. Martini to examine  
14 them.

15 MR. WIGGINS: Okay.

16 THE WITNESS: That's -- that's what  
17 -- that's my testimony.

18 MR. WIGGINS: Okay.

19 Q. (Mr. Wiggins) And he pretty much  
20 confirmed what your opinion was in reference to those  
21 fluorescent fixtures.

22 A. Yes, sir.

23 Q. Did he tell you that he agreed with your  
24 assessment of the fixtures and that they in his  
25 opinion would or could not have been the cause of the

1 fire?

2 A. I don't know that he said -- he ever told  
3 me he agreed with me. I'm comfortable he told me  
4 they didn't cause the fire.

5 Q. Okay. Was there anything else that Mr.  
6 Martini was called upon to examine on that date that  
7 he met you there, on the 30th of January 2012?

8 A. Well, my sole purpose for Mr. Martini's  
9 involvement in this investigation from January 20 --  
10 January 30th through to date is to examine electrical  
11 service and components.

12 Q. And you would yield to any assessment that  
13 he made in reference to those components?

14 A. Yes, sir.

15 Q. And he would be the source that you would  
16 have relied upon to give you his opinion as to  
17 whether or not there was anything in any of those  
18 components that could have been an ignition source of  
19 this fire.

20 A. Yes, sir.

21 Q. When did he complete his investigation of  
22 those items on that Monday, the 22nd -- the 30th of  
23 January?

24 A. I don't recall what time but two, three  
25 o'clock.

1 Q. Okay.

2 A. It would have been in the afternoon.

3 Q. Okay. So the items that you recall that  
4 he looked at was basically -- the items that he  
5 looked at would have been the circuit boards. Is  
6 that correct?

7 A. Yes, sir.

8 Q. And let me ask you this. Did he point out  
9 anything to you in reference to those circuit boards  
10 during the course of his investigation?

11 A. No, sir.

12 Q. The next thing he looked at was the  
13 wiring. And that wiring was taken from, again, the  
14 area where you had identified the origin of the fire.  
15 Is that correct?

16 A. Yes, sir, with one explanation.

17 Q. Okay.

18 A. I don't know the order exactly that he  
19 identified things in.

20 Q. Okay.

21 A. I mean, that he examined these items.

22 Q. Okay.

23 A. I just know he was in that part of the  
24 store for several hours.

25 Q. Did he have any -- did he make any



1        comments to you about the wiring?

2            A.     Did not cause the fire.

3            Q.     He made that comment to you.

4            A.     Yes, sir.

5            Q.     And did he identify the wiring that he  
6        said could not -- or did not cause the fire?

7            A.     No, sir, not to me, anyway.

8            Q.     Other than -- we talked about the  
9        fluorescent light fixtures, was there anything else  
10       that he examined that you can recall on the day that  
11       he was there?

12           A.     The electrical pon -- components that  
13       remained in the office wall adjacent to drive-thru  
14       window number one.

15           Q.     Okay. The electrical components would  
16       have been the electrical boxes?

17           A.     Labeled one, two, and three.

18           Q.     One -- labeled one, two, and three.

19           A.     In photos 25, 23, and 20.

20           Q.     Okay.

21           A.     In his May 2012 report.

22           Q.     Okay, and that was the report that was  
23       made to Nationwide ---

24           A.     --- Yes, sir.

25           Q.     --- Insurance Company.

1 A. Yes, sir.

2 Q. Is there anything else that you asked him  
3 to look at electrically on that date?

4 A. No, sir.

5 Q. After that examination you had a  
6 discussion with Mr. Martini as to his findings, I  
7 take it.

8 A. I don't recall any conversations after  
9 January 30th. I know he told me on the 30th he saw  
10 no evidence that the fire was electrical.

11 Q. Okay. That's what I'm getting at. He  
12 told you that after he completed his investigation.

13 A. On the 30th.

14 Q. On the 30th.

15 A. Yes, sir.

16 Q. And did you have any further conversations  
17 with Mr. Martini after that in reference to that  
18 issue?

19 MS. DALY: Objection to form.

20 THE WITNESS: Well, yes.

21 MR. WIGGINS: Okay.

22 Q. (Mr. Wiggins) When was that?

23 A. Sometime in November when we were no --  
24 when we were contacted. I had conversations with Mr.  
25 Booth and Mr. Cavaroc. I'm trying to think who else

1 I talked to -- but that led to our going back to  
2 Miami Subs in November of 2012.

3 Q. Okay. After you -- after the conversation  
4 with Mr. Martini in 2 -- in January 30th of 2012,  
5 then did you send an e-mail to Michael Jezierski in  
6 reference to your findings?

7 A. I wrote a letter to Mr. Jezierski. I may  
8 have attached that letter to an e-mail. But the  
9 substan -- the substantive information was in a  
10 Microsoft Word document, not in an e-mail.

11 Q. I had asked this earlier, but just to get  
12 it into the record, Mr. Lacy, this is a letter that  
13 we earlier identified which is Exhibit -- Plaintiff's  
14 Exhibit Number 35, that said that there were no  
15 accelerants in the sample that you had sent to the  
16 lab. Is that correct?

17 A. Okay, I -- it is the e-mail. I would  
18 question the exhibit number. I don't know -- I  
19 cannot read the second digit of the number that  
20 begins with three.

21 Q. Okay. But that's what it is.

22 A. It's the e-mail, yes, sir. I'm not going  
23 to agree to the exhibit number. I'm going to agree  
24 it's an e-mail from me to Mr. Jezierski saying the  
25 lab analysis was negative.

1           Q.     Let me show you what has been marked as  
2     the Plaintiff's Exhibit Number 36 and ask if you can  
3     identify ---

4           A.     --- And -- okay.

5           (Witness examined document)

6           A.     Yes, sir. This is the letter that I sent  
7     to Mr. Jezierski. And as I mentioned earlier, it  
8     very well may have been attached to an e-mail but the  
9     e-mail would have just simply said see the attached  
10    letter. The substantive information would have been  
11    in Microsoft Word, not in an e-mail.

12          Q.     Okay. And the substance of this letter is  
13    that you had completed your fire scene invest --  
14    examination of the Miami Subs restaurant at 552 North  
15    McPherson Church Street. The electrical engineer,  
16    Henry Martini, PE, examined the fire scene on January  
17    the 30th and concluded that after examination the  
18    fire was not the result of a failure of the  
19    structural or electrical components or of an  
20    appliance in the building. Is that true?

21          A.     Yes, sir.

22          Q.     And you base the -- that information, I  
23    take it, upon what Mr. Martini had told you after his  
24    examination?

25          A.     Yes, sir.

1 Q. And you wrote this letter after having  
2 known that the circuit boards were found in the or --  
3 in the area of origin of this fire.

4 A. Yes, with an explanation.

5 Q. Okay.

6 A. May I explain?

7 Q. Sure. Oh, yeah, sure.

8 A. I wrote this letter after know -- after  
9 knowing that the circuit boards -- circuit boards were  
10 found in the area of origin and Mr. Martini had  
11 examined the circuit boards and found no evidence of  
12 their involvement in the fire.

13 Q. But shouldn't you have reported that to  
14 Nationwide for them to make the substance -- the  
15 significance of that determination?

16 MS. DALY: Objection to form.

17 THE WITNESS: Nationwide is relying  
18 on me and Mr. Martini to make that determination.

19 Q. (Mr. Wiggins) Well, you knew that the  
20 letter that you were writing to Nationwide Insurance  
21 Company was going to be used by them either to deny  
22 or to pay this claim, did you not?

23 A. No, sir.

24 Q. You did not know that?

25 A. No, sir.

1           Q.     You did not know that they were relying  
2     upon your examining -- your cause-and-origin -- your  
3     origin-and-cause investigation to make the  
4     determination of whether to pay or deny the claim?

5           A.     The original ---

6                     MS. DALY:   --- Objection to the  
7     form.

8                     THE WITNESS:   The original  
9     conversation with Mike Jezierski about this letter  
10    has to deal with the second paragraph.

11                    MR. WIGGINS:   Okay.

12                    THE WITNESS:   His concern was were  
13    the government investigators completed with the  
14    examination of the fire scene and the structure.  
15    That was the -- he and I had a phone conversation  
16    probably on February -- well, it says in February  
17    1st. His main -- well, no, I won't say main. His  
18    number one concern, primary concern was are the  
19    government investigators finished.

20                    Then I think he asked me has the  
21    electrical engineer looked at it. So I summarized  
22    everything that Henry and I did in the first  
23    paragraph. I summarized what the government  
24    investigators did in the second paragraph.

25                    This letter I am very comfortable was not

1 to be used as a basis for pay or deny.

2 Q. (Mr. Wiggins) Let me show you what has  
3 been marked as Exhibit Number 37, and you may or may  
4 not recognize that document, Mr. Lacy. It's entitled  
5 Commercial, slash, Farm Property Large Loss Report.

6 (Witness examined document)

7 A. I saw it on -- among other documents  
8 forwarded to me by this law firm, but I've never read  
9 it in detail.

10 Q. Okay. Look on the second page of this  
11 document where it says facts of loss.

12 Do you see that?

13 A. Yes, sir.

14 Q. And there it says the fire started in the  
15 area of the kitchen, slash, rear hall of the  
16 restaurant.

17 Did you agree with that statement, or do  
18 you agree with that statement?

19 A. Yes, sir.

20 Q. And then the next statement is the fire  
21 consumed the shelf rack of plastic plates, styrofoam  
22 containers, boxes and plastic bags.

23 A. Yes, sir.

24 Q. You agree with that statement?

25 A. Yes, sir.

1 Q. And it says the fire burned up the wall  
2 and damaged the ceiling tiles. And we've discussed  
3 that.

4 And you, I take it, agree with that?

5 A. Yes, sir.

6 Q. There is possible heat damage to the bar  
7 joists that support the roof.

8 Did you make that assessment when you did  
9 your investi ---

10 A. --- I made that observation. I'm not a  
11 structural engineer, but I would confirm that's  
12 correct.

13 Q. And the remainder of the building suffered  
14 severe smoke damage.

15 Would that be a true statement? You would  
16 agree with that?

17 A. Yes, sir.

18 Q. The contents, including the equipment,  
19 furniture, small ware, table wares, food were also  
20 damaged by the severe smoke.

21 Is that also a correct statement?

22 A. Yes, sir.

23 Q. And the health inspector ordered all  
24 food-handling equipment needs to be replaced.

25 Was that information you obtained from a



1 -- one of the public officials?

2 A. I have no idea.

3 Q. You never talked to anyone about that --  
4 one of the health inspectors about that?

5 A. No, sir.

6 Q. And the exterior EIFS system suffered only  
7 minor smoke damage in the area around the drive-in  
8 window.

9 Would that be a true statement? You would  
10 agree with that?

11 A. Yes.

12 Q. And then it says, according to the verbal  
13 report from the origin-and-cause investigator -- and  
14 that would have been identifying you, would it not?

15 A. Yes, sir.

16 Q. The origin of the fire is in the area  
17 that's next to the rear drive-in -- and we've  
18 identified it as the first in our conversation today.

19 A. Yes, sir.

20 Q. Is that correct?

21 A. Yes, sir.

22 Q. First drive-in window near the front wall  
23 of the office. And then it says the cause of the  
24 fire is incendiary in nature.

25 Is that what you told Mr. Jezierski on or

1 about the 1st of February 2012?

2 A. Yes, sir.

3 Q. And then in the next bracket down it talks  
4 about expert consultants. It says -- checks yes, and  
5 said we hired Donan Electrical Engineer Henry Martini  
6 to assist with the determination of the cause of the  
7 fire by excluding electrical.

8 You see that?

9 A. Do I see it?

10 Q. Yeah.

11 A. Yes, sir, I do.

12 Q. And the budget for the investigation is  
13 \$2,500.

14 You have no knowledge of that, I take it?

15 A. I have no knowledge of any of the budgets  
16 that are set under experts and consultants.

17 Q. Okay. You never had anything to do with  
18 that at all or any input into that?

19 A. No, sir.

20 Q. The plastic plates that you had reference  
21 to, the shelf rack of plastic plates, styrofoam  
22 containers, boxes and plastic bags, was that in the  
23 information given to you by Mrs. Moon?

24 A. I believe so.

25 Q. Well, did anybody else ever tell you

1 anything about the location of the styrofoam plates,  
2 the plastic cup -- cups and the styro -- and -- I'm  
3 sorry -- and the plastic knives, forks, etcetera?

4 A. My only hesitation is to see if Raven  
5 mentioned it.

6 (Witness examined documents)

7 A. No, that probably came from Ms. Moon.

8 Q. Okay, and where did Mrs. Moon tell you  
9 that those devices, those plastic cups, the styrofoam  
10 plates, the knives and forks and the cellophane  
11 containers were located?

12 A. On the shelf to the right of drive-thru  
13 window number one.

14 Q. Okay, and that would have -- would that  
15 have been in the vicinity where you've now come to  
16 realize and know that was the location of the Ion IQ  
17 communication device in the restaurant?

18 A. Yes, sir.

19 MS. DALY: Object to the form.

20 Q. (Mr. Wiggins) Just to go back just for a  
21 moment, Mr. Lacy, to a conversation we talked about  
22 early on -- this is Exhibit 42.

23 Is this invoice that you had reference to  
24 concerning the Seagate hard drives that were....

25 (Witness examined document)

1 A. Yes, sir.

2 Q. And this a -- data recovery was 250  
3 gigabytes. Do you see that?

4 Then it has got a total of 1,370, and then  
5 ES -- USB 135, total 1,505.

6 And this, you said, was paid by Mr.  
7 Jezierski.

8 A. Yes.

9 Q. It's not -- didn't come through you, did  
10 it?

11 A. The invoice came to me and I forwarded it  
12 to Mr. Jezierski for payment.

13 Q. And then the next page of this is a data  
14 recovery evaluation directed to you -- I'm sorry --  
15 from you to Jezierski. Is that correct?

16 A. Yes.

17 Q. And this is dated 3-7-2012, and again, you  
18 say there's approximately 13 gigabytes of data  
19 recovered, when it actually was 250 gigabytes, was it  
20 not?

21 MS. DALY: Objection to form.

22 THE WITNESS: All right, Mr.  
23 Wiggins, go back to the invoice.

24 MR. WIGGINS: I got it. Okay.

25 THE WITNESS: The hard drives are

1 250 gigabytes in size.

2 MR. WIGGINS: I got you. Okay.

3 THE WITNESS: There's only 13 gig on  
4 -- on one of the hard drives.

5 You see where, under miscellaneous, Mr.  
6 Stone put not necessary?

7 MR. WIGGINS: I do.

8 THE WITNESS: Remember my telling  
9 you earlier that they only copied one of the hard  
10 drives because they were ---

11 MR. WIGGINS: --- One was a backup.

12 THE WITNESS: One was -- they're --  
13 they're -- one was an image of the other.

14 MR. WIGGINS: I understand.

15 THE WITNESS: So it's a 250-gig hard  
16 drive that contained 13 gig of data.

17 MR. WIGGINS: Okay.

18 THE WITNESS: So they only copied 13  
19 gig.

20 MR. WIGGINS: Okay.

21 Q. (Mr. Wiggins) And then that was sent --  
22 that was sent to you by Marvin Stone of Rewave Data  
23 Recovery.

24 A. What was sent to me?

25 Q. Those -- the -- well, what he sent to you

1 was the zip files for your review. You got those?

2 A. Yes ---

3 MS. DALY: --- Objection to form.

4 THE WITNESS: Yes, sir. And I got  
5 the external hard drive that's referenced on the  
6 invoice as costing \$135.

7 MR. WIGGINS: Okay.

8 Q. (Mr. Wiggins) Again, just to kind of tie  
9 down the conclusion of that, Mr. Lacy, let me show  
10 you what I've marked as Exhibit -- Plaintiff's  
11 Exhibit Number 44.

12 This is a e-mail from Jezierski to Harold  
13 Snyder. You see that?

14 A. Yes, sir.

15 Q. Did you get a copy of this?

16 A. No, sir.

17 Q. He says, anyway, I talked with the O&C  
18 investigator.

19 That would have been you, I take it?

20 A. Yes, sir.

21 Q. Who has the hard drive. He said that the  
22 programs in the hard drive looks like a new computer  
23 hard drive. There were no video files.

24 You told me that earlier and that you told  
25 him that.

1           A.     Yes, sir.

2           Q.     In fact, there are no, quote, normal, end  
3     quote, data files that you would expect to see on a  
4     computer that was used for several weeks -- da, da,  
5     da, da, or it was wiped clean and the original  
6     software reinstalled.

7                     What is he talking about there? Do you  
8     know?

9           (Witness examined document)

10          A.     I -- you said original software, and I  
11     don't see -- oh, there it is, original starting  
12     software.

13          Q.     Uh-huh.

14          (Witness examined document)

15          A.     All right, what Mr. Jezierski is saying is  
16     -- and this is what I told him to some extent.

17                     There are no video files. I told him  
18     that.

19          Q.     Uh-huh.

20          A.     There are no normal data files that you  
21     would expect to see on a spreadsheet that was used  
22     for several weeks, begin parenthesis, Word docs,  
23     spreadsheets, etcetera, end parenthesis.

24                     That's the extent of what I told him.

25          Q.     Okay.

1           A.     Then, apparently, I told him that I was  
2 going to check with the technician to see what his  
3 thoughts are, but I can tell you at this point my  
4 thought was we're done with the hard drives.

5           Q.     But the hard drives never were wiped  
6 clean, were they? They had ---

7           A.     --- No, sir.

8           Q.     --- They had data on them?

9           A.     Yes, sir.

10          Q.     Now, after you left the restaurant on the  
11 30th, you had completed your investigation at that  
12 point, Mr. Lacy.

13                 Would that be a true statement?

14          A.     Yes, sir.

15          Q.     And you had concluded at that point in  
16 time that this fire was an incendiary fire?

17          A.     Yes, sir.

18          Q.     And go back to one of my earlier questions  
19 -- had you ever developed any kind -- well, let me  
20 strike that.

21                 Had you given any consideration to the  
22 fact that the circuit board that was found in the  
23 area of origin of this fire might have had anything  
24 to do with the fire?

25                         MS. DALY: Objection to the form of



1 the question.

2 THE WITNESS: Not after Mr. Martini  
3 told me that he saw no evidence of the fire  
4 originating at the printed circuit board.

5 Q. (Mr. Wiggins) Should not that circuit  
6 board have been submitted to someone like Mr. Cavaroc  
7 to ident -- to have been examined microscopically or  
8 x-rayed to determine whether or not there was any  
9 defects in that system ---

10 MS. DALY: --- Objection.

11 Q. (Mr. Wiggins) --- Prior to making that  
12 call?

13 MS. DALY: Objection to the form of  
14 the question.

15 THE WITNESS: As far as examining a  
16 printed circuit board, I would believe Mr. Martini  
17 would possess the same skills as Mr. Cavaroc.

18 Q. (Mr. Wiggins) He did not examine it by  
19 x-ray at the scene, did he?

20 A. No, sir.

21 Q. He did not remove any parts from the  
22 circuit board during the course of the examination,  
23 did he?

24 A. Not that I'm aware of.

25 Q. He did not, nor did you, tag and -- to

1     preserve that circuit board, did you?

2             A.     No, sir.

3                     MS. DALY:   Objection to form.

4             Q.     (Mr. Wiggins)   And would it not have been  
5     your responsibility to have collected any evidence,  
6     any physical evidence at the scene of the fire, and  
7     preserved that for future examination by anyone else  
8     coming behind you and Mr. Martini to have looked at  
9     that to make any determination about the cause of  
10    this fire?

11                    MS. DALY:   Objection to the form of  
12    the question.

13                    THE WITNESS:   It would have been my  
14    responsibility, number -- that's number one.

15                    Number two, we left those items there for  
16    whoever came after us.

17             Q.     (Mr. Wiggins)   Did you tag, though -- did  
18    you tag the ---

19             A.     --- No, sir.

20             Q.     --- Circuit board ---

21             A.     --- I only tag what I remove.

22             Q.     And you removed several things from the  
23    restaurant, did you not?

24             A.     Yes, sir.

25             Q.     You removed the can that had the gas

1 written on it?

2 A. Before I get too far I'm going to check my  
3 notes.

4 Q. Okay.

5 (Witness examined document)

6 A. Yes, sir.

7 Q. What else did you remove?

8 A. Four plastic Pepsi cups six and a half  
9 inches tall.

10 Q. Where did you find those?

11 A. In the -- under the counter -- I guess  
12 you'd call it a food prep counter.

13 But I was told that cups of this --  
14 similar cups were found on that metal rack, and then  
15 six plastic, tan-colored 10-inch diameter plates,  
16 likewise, same location where I secured them from,  
17 but plates very similar to that were on that metal  
18 shelf.

19 Q. Were they styrofoam plates?

20 A. No, sir, these were plastic.

21 Q. Plastic.

22 A. On that shelf were styrofoam and plastic  
23 plates.

24 Q. Okay.

25 A. Then the gas can, as you mentioned, which

1 is actually an eight-liter plastic container labeled  
2 gas, originally it was a fruit drink mix container,  
3 but someone had written gas on it -- fire debris  
4 sample from -- from the floor area under the first  
5 drive-thru window.

6 Those are the four items I secured from  
7 the fire scene. Then I had the two hard drives  
8 vouchered over to me by Detective House.

9 Q. Now, you say it would have been your  
10 responsibility to have tagged and preserved any  
11 physical evidence that was of any significance in the  
12 fire.

13 Is that ---

14 MS. DALY: --- Objection.

15 Q. (Mr. Wiggins) Would that be true?

16 MS. DALY: Objection to form and  
17 mischaracterization of his testimony.

18 THE WITNESS: Well, it would be my  
19 responsibility to identify, collect, tag, secure and  
20 store any evidence removed from a fire scene.

21 MR. WIGGINS: Okay.

22 THE WITNESS: That's number one.

23 Other items of value that were left at the  
24 scene would not have been tagged.

25 MR. WIGGINS: Okay.

1 THE WITNESS: All right, I -- you --

2 I tag ---

3 Q. (Mr. Wiggins) --- What is ---

4 A. --- I tag ---

5 Q. --- Why ---

6 A. --- I tag only what I take.

7 Q. Okay, and why did you not consider it to  
8 be prudent to have tagged and preserved the circuit  
9 board that was found in the area of the -- of the  
10 fire?

11 A. There is a line ---

12 MS. DALY: --- Objection.

13 THE WITNESS: There is a line of  
14 thought that items of value can be left at the fire  
15 scene if the fire scene can be secured, and this one  
16 certainly could.

17 Mr. -- I mean, Jimmy was able to lock the  
18 doors. We went back there in November and found the  
19 doors locked exactly how they were being locked in  
20 January and February when I was there.

21 NFPA 921 actually contains a sentence or  
22 two about leaving those items at the scene for other  
23 parties to examine. We had no idea who was coming  
24 behind us.

25 Q. (Mr. Wiggins) But you knew, or suspected,

1     that somebody would be coming behind you, did you  
2     not?

3             A.     No, sir.

4                     MS. DALY:  Objection to form.

5             Q.     (Mr. Wiggins)  Did you not think that?

6                     MS. DALY:  Objection to the form.

7                     THE WITNESS:  No, sir.  I have  
8     probably -- well, no.  I'll just leave it at that.  
9     No, sir.

10            Q.     (Mr. Wiggins)  Let me show you what I've  
11     marked as Plaintiff's Exhibit Number -- 123....

12                     (\* Exhibit 123 was marked \*)

13            Q.     And ask if you can identify that document.  
14                     (Witness examined document)

15                     MR. WIGGINS:  I'll give it to her  
16     since she doesn't....

17                     THE WITNESS:  Yes, sir.

18            Q.     (Mr. Wiggins)  And in both of your reports  
19     that you filed ---

20            A.     --- Okay, this is a portion of the  
21     document.  This is not the entire document.

22            Q.     I understand.

23            A.     Okay.

24            Q.     But what have you got there in your hand?

25            A.     I have the cover sheet.  I do not have

1 pages one through 16.

2 Q. Okay.

3 A. I do not have pages 18 through 109. I do  
4 not have pages 110 through -- I'm sorry -- 111  
5 through 130.

6 So I mean, there's a substantial portion  
7 of the document missing.

8 Q. Look on the third page, Mr. Lacy, it says  
9 11.35.1 -- 3.5.1, responsibilities of investigator.

10 Do you see that?

11 A. Yes.

12 Q. And it says there the responsibility of  
13 the investigator or anyone who handles or examines  
14 evidence -- and you did in fact handle or examine  
15 this evidence, did you not?

16 A. Yes, sir.

17 Q. Is evidence preservation and scope of  
18 responsibility carried -- varies according to such  
19 factors at the investigator's jurisdiction, whether  
20 he or she is a public official or private sector  
21 investigator, whether criminal conduct is indicated,  
22 and applicable laws and regulations.

23 However, regardless of the scope and  
24 responsibility of the investigator, care should be  
25 taken to avoid destruction of the evidence.

1                   You agree with that, do you not?

2                   MS. DALY: Objection to form.

3                   THE WITNESS: Yes, sir.

4           Q.     (Mr. Wiggins) And look at chapter 15,  
5     which is on page 134. It's got documentation of the  
6     investigation.

7           A.     Okay.

8           Q.     And 15.1.1 states that the goal in  
9     documenting any fire or explosion investigation is to  
10    accurately record the investigation through media  
11    that will allow investigators to recall and  
12    communicate their observations at a later date.

13                   You did that, did you not?

14          A.     Yes, sir.

15          Q.     And it also says, under 1.1.2, thorough  
16    and accurate documentation of the investigation is  
17    critical, because it's from this compilation of  
18    factual data that investigative opinions and  
19    conclusions can be supported and verified.

20                   You agree with that, do you not?

21          A.     Yes.

22                   MS. DALY: Object.

23          Q.     (Mr. Wiggins) And you did that. You made  
24    notes ---

25          A.     --- Yes, sir.



1 Q. --- That could be -- you took photographs.

2 All of those things could be verified by  
3 anybody coming behind you, could they not?

4 A. Yes, sir.

5 Q. Okay.

6 A. And let me explain my answer further, if I  
7 may.

8 Q. You may.

9 A. I agree with what is said in 15.1.2. I  
10 would also call your attention to 11.3.5.

11 You mentioned 11.3.5.1. Removal of those  
12 items from the fire scene could also result in  
13 another party -- because on January 30th I had no  
14 idea who might be coming behind us -- another party  
15 alleging spoliation.

16 Q. You're talking about 11.3.5?

17 A. Point one.

18 Q. And then at ---

19 A. --- I'm sorry. 11.3.5.

20 Q. Spoliation of evidence.

21 A. Yes.

22 Q. And generally do you take care to avoid  
23 that kind of an issue or a problem?

24 MS. DALY: Objection to form.

25 THE WITNESS: Yes, sir. And the

1 common way to avoid that problem is you leave the  
2 evidence at the scene until other parties can look at  
3 it.

4 If I remove it from the scene, parties  
5 have alleged, albeit unsuccessfully, that -- they've  
6 alleged evidence spoliation.

7 Q. (Mr. Wiggins) In 16.1, Mr. Lacy, we've  
8 got physical evidence, 16.1. It says, during the  
9 course of any fire investigation, the fire  
10 investigator is likely to be responsible for  
11 locating, collecting, identifying, storing, examining  
12 and arranging for testing of physical evidence. The  
13 fire investigator should be thoroughly familiar with  
14 recommended and accepted methods of processing such  
15 physical evidence.

16 And one in 16.3 says preservation of the  
17 fire scene and physical evidence, and it says every  
18 attempt should be made to protect and preserve the  
19 fire scene and as intact and undisturbed as possible  
20 with the structure, contents, fixtures and  
21 furnishings remaining in their pre-fire locations.

22 You agree with that, do you not?

23 A. Yes, sir.

24 Q. And of course, in this case Mr. -- in this  
25 particular instance the SBI agent had removed or had

1 reconstructed some of the fire scene prior to your  
2 arrival?

3 A. Yes.

4 Q. And it says that the fire -- the entire  
5 fire scene should be considered the physical evidence  
6 and should be preserved and protected.

7 And you generally would try to do that?

8 A. Yes, sir. And that's why we left the  
9 printed circuit boards there, in case anybody else  
10 came in behind us and wanted to look at them.

11 Q. Well, wouldn't it have been better to have  
12 protected the circuit boards if you had taken them in  
13 your possession, tagged them, identified them and  
14 stored them, and told -- made known to anyone who  
15 wanted to come look at them that you had them in your  
16 possession for them to examine and look at?

17 MS. DALY: Objection to form.

18 THE WITNESS: That is one way of  
19 looking at it. However, if we do that, you open  
20 yourself up to a spoliation claim for removing them  
21 from the scene.

22 Q. (Mr. Wiggins) Look at 16.5.7 entitled  
23 Collection of Appliances or Small Industrial  
24 Equipment. @@

25 Do you see that, Mr. Lacy? That's on page

1 ---

2 A. --- Yes.

3 Q. --- 151. Whenever an appliance or other  
4 type of equipment is believed to be part of the  
5 ignition scenario, it is recommended that the fire  
6 investigator have it examined or tested. Appliances  
7 must be collected as physical evidence to support the  
8 fire investigator's determination that the appliance  
9 was or was not the cause of the fire. Do you ---

10 A. --- Okay, I have a problem with the first  
11 sentence.

12 Q. Okay. Do you have a problem with any part  
13 of that?

14 A. The first sentence I do.

15 Q. Okay. What first sentence do you have a  
16 problem with?

17 A. Whenever an appliance or other type of  
18 equipment is believed to be part of the ignition  
19 scenario.

20 Q. Okay.

21 A. PCB -- that printed circuit board was not  
22 part of the ignition scenario.

23 Q. Well, it could have been, could it not?

24 MS. DALY: Objection to form.

25 THE WITNESS: Not by our

1 determination.

2 MR. WIGGINS: Okay.

3 Q. (Mr. Wiggins) But it could have been by  
4 someone else's determination, couldn't it?

5 MS. DALY: Objection to form.

6 THE WITNESS: Mr. Martini came in  
7 and examined it, said it was not involved in the  
8 ignition -- not -- not -- was not the ignition source  
9 for the fire.

10 Q. (Mr. Wiggins) He could have been wrong  
11 about that, couldn't he?

12 MS. DALY: Objection.

13 THE WITNESS: Based upon the skills,  
14 his training, and the accuracy of prior  
15 investigations, I trust Henry Martini immensely.

16 Q. (Mr. Wiggins) Well, I trust him, too, Mr.  
17 Lacy. But he could have been wrong ---

18 MS. DALY: --- Objection to form.

19 Q. (Mr. Wiggins) --- Couldn't he?

20 A. I don't believe he was.

21 Q. He told me yesterday that the best way to  
22 have determined whether or not there was any defect  
23 in this PCB board, this printed circuit board would  
24 have been to submit it to Mr. Cavaroc's laboratory to  
25 examine it.

1 MS. DALY: Objection. Complete  
2 mischaracterization ---

3 Q. (Mr. Wiggins) --- Would you agree?

4 MR. WIGGINS: Maybe I did misunder  
5 ---

6 MS. DALY: --- Mischaracterization  
7 of ---

8 MR. WIGGINS: --- Maybe I did mis  
9 ---

10 MS. DALY: --- Mr. Martini's ---

11 MR. WIGGINS: --- He did say that.

12 MS. DALY: No, he did not.

13 MR. WIGGINS: Would not you agree  
14 with that? Well, tell me what he said.

15 MS. DALY: Objection.

16 MR. WIGGINS: Well, Rachel, tell me  
17 what he said.

18 MS. DALY: Mr. Martini said ---

19 MR. WIGGINS: --- Yeah.

20 MS. DALY: --- That it would not  
21 have been -- that the -- what he did was exactly what  
22 needed to be to determine whether or not there was an  
23 electrical source of ignition on that PC board.

24 MR. WIGGINS: He said he made that  
25 determination but he said that the best thing would

1 be ---

2 MS. DALY: --- No, he did not.

3 Q. (Mr. Wiggins) Would not the best system  
4 to have been to -- the best thing to have done was  
5 submit this to a laboratory to test it to see whether  
6 or not it was a possibility that it could have  
7 contributed to this fire, Mr. Lacy?

8 MS. DALY: Objection to form.

9 THE WITNESS: If Mr. Martini had  
10 come to me on January 30th, 2012 and said we need to  
11 get this x-rayed, I would have said okay. He didn't.  
12 He came to me and told me the PC -- the printed  
13 circuit boards are not involved in the ignition of --  
14 as the -- not involved in the fire, damaged as a  
15 result of the fire, not involved in the fire.

16 The wiring that was placed on the surface  
17 beside the printed circuit boards, I examined it.  
18 It's not involved in the fire. The fluorescent light  
19 fixture ---

20 Q. (Mr. Wiggins) --- Wait. Who said he  
21 examined it?

22 A. Mr. Martini examined it.

23 Q. He told me he didn't examine it.

24 A. Well ---

25 MS. DALY: --- Objection.

1 Mischaracterization of testimony.

2 MR. WIGGINS: Well, what did he say,  
3 Rachel?

4 MS. DALY: I think Mr. Martini's  
5 testimony will speak for itself ---

6 MR. WIGGINS: --- Well, he said he  
7 couldn't find it.

8 MS. DALY: --- In his deposition.

9 MR. WIGGINS: He didn't recall ever  
10 seeing it is what I recall he said.

11 THE WITNESS: Well, Mr. Wiggins,  
12 it's in a photograph that he included in his report.

13 MR. WIGGINS: Okay.

14 THE WITNESS: I believe he examined  
15 it.

16 MR. WIGGINS: Okay.

17 Q. (Mr. Wiggins) If he did not examine it,  
18 then what would your answer be?

19 MS. DALY: Objection to form.  
20 Examined it. What are you referring to when you say  
21 it?

22 MR. WIGGINS: I'm talking about the  
23 electrical source for the PCB board.

24 MS. DALY: Objection to form.

25 THE WITNESS: Okay, the wiring that



1 I'm talking about is the wiring that was placed on  
2 the counter near the cash registers, and Mr. Martini  
3 examined it.

4 MR. WIGGINS: Okay.

5 Q. (Mr. Wiggins) Do you know what wiring  
6 that was?

7 A. No, sir.

8 Q. Okay. I'm talking ---

9 A. --- That was -- that ---

10 Q. --- I talking about the wiring for the PCB  
11 board.

12 A. Okay, that would have been in the wall  
13 behind the sheet rock beside drive-through window  
14 number one.

15 Q. Okay. Did you see it?

16 A. No, sir.

17 Q. Did you examine it?

18 A. No, sir. The fire did not originate at  
19 that height.

20 Q. Okay. Again, my question, Mr. Lacy, was  
21 Mr. Martini could have been -- could have made an  
22 error in his assessment, could he not?

23 MS. DALY: Objection.

24 Q. (Mr. Wiggins) Even though you have great  
25 confidence in his ability, we all make mistakes, and

1 he could have made a mistake, couldn't he?

2 MS. DALY: Objection to form of the  
3 question.

4 THE WITNESS: If he made some  
5 mistake, as you suggest, he -- he makes a mistake on  
6 an -- on a component that is not in the area of  
7 origin of the fire. It is above the area of origin.  
8 And it also -- photographs also illustrate that that  
9 component was not involved in the origin of the fire  
10 but was attacked by a developing fire.

11 So the big issue about whether or not he  
12 could have made a mistake kind of -- not kind of ---

13 Q. (Mr. Wiggins) --- You think it's  
14 irrelevant.

15 A. Yes, sir.

16 MS. DALY: Objection to form.

17 MR. WIGGINS: Okay.

18 Q. (Mr. Wiggins) All the evidence that you  
19 ever collected, Mr. Lacy, in reference to the  
20 location of the styrofoam plates, the plastic plates,  
21 the plastic cups, and the cellophane in which those  
22 cups were encased were on the top shelf of the drying  
23 rack in and near drive-in window number one.

24 A. I don't know that all of those items were  
25 on the top shelf. They were on shelves.

1           Q.    I think Mrs. Moon said they were on the  
2   top shelf and that there -- others were reserved for  
3   drying plates.  Do you recall that?

4           A.    Yes, sir.  And I thought some of the  
5   plates that I took as evidence in item four -- I'm  
6   sorry -- item three could have been lower.

7           Q.    Okay.

8           A.    They may have been -- honestly, the plates  
9   I took were not the ones that were on that shelf and  
10  drying.  They were identical to what was on that  
11  shelf and drying.  So I took it that those -- some of  
12  those items would be lower.

13          Q.    Did anyone ever tell you that they were in  
14  any other place than on that shelf, on that drying  
15  rack?

16          A.    What are you characterizing as they?

17          Q.    I'm talking about anybody that you  
18  interviewed.

19          A.    But what items were anywhere else?

20          Q.    Those styrofoam plates, those plastic  
21  plates, those plastic cups, and the cellophane in  
22  which they were encased.

23          A.    I saw some other items down that hall, the  
24  rear hall of the restaurant.  But it's my  
25  understanding they were on this shelf.

1 Q. Okay.

2 A. And when I say shelf I'm talking about the  
3 whole unit, all shelves.

4 Q. Okay. And my question was did anyone ever  
5 tell you that they were located any other place other  
6 than on that drying rack in or an area where you've  
7 identified as the area of the fire.

8 A. No, sir.

9 Q. Let's talk about the point of origin, the  
10 area of origin for just a moment. You've said that  
11 the location of this Ion IQ was not within the area  
12 of origin of this fire.

13 A. Correct.

14 Q. Now, area of origin and point of origin  
15 are two different things, are they not?

16 A. Yes.

17 Q. Point of origin means the exact spot where  
18 this fire located -- was located, or might have been  
19 located. Is that correct?

20 MS. DALY: Objection to form.

21 THE WITNESS: It is a term that's  
22 used differently by different people. But typically  
23 point is more specific than area.

24 MR. WIGGINS: Okay.

25 Q. (Mr. Wiggins) And area can be a pretty

1 large area, could it not?

2 A. In the eyes of the beholder, sir.

3 Q. Could not the area of this -- origin of  
4 this fire have been anywhere within the area of the  
5 shelf of this -- top shelf of this drying rack and  
6 the floor of this restaurant?

7 A. No, sir.

8 Q. Why do you say that?

9 A. The damage to the floor of the area just  
10 inside the drive-through window number one, the  
11 damage to the rolled aluminum cart, and the identi --  
12 observation, identification, and documentation of the  
13 protected area pattern on the wall to the right of  
14 the drive-through window number one.

15 Q. Okay. Now, going back for just a moment  
16 to what I was just -- we were just talking about,  
17 collection of this data, collection of the physical  
18 evidence. And you said you agree with this paragraph  
19 except for the first paragraph. And that -- the  
20 first sentence says whenever an appliance is believed  
21 to be part of the ignition scenario.

22 And would not that have been part of the  
23 ignition scenario either to rule in or to rule out  
24 the ignition source of this fire?

25 MS. DALY: Objection to form.

1 THE WITNESS: Mr. Martini examined  
2 it and eliminated it. It was excluded as a potential  
3 ignition source.

4 Q. (Mr. Wiggins) And then in 16.5.7.1, where  
5 practical, it says, the entire appliance or item of  
6 equipment should be collected intact as physical  
7 evidence. This includes any electrical power cords  
8 or fuel lines supplying or controlling it.

9 And that power cord was not collected, was  
10 it, Mr. Lacy?

11 A. Okay, 16.5 ---

12 MS. DALY: --- Objection to the form  
13 of the question.

14 THE WITNESS: --- .7.1 hinges on the  
15 first sentence of 16.5.7, whenever an appliance or  
16 other type of equipment is believed to be part of the  
17 ignition scenario. If the appliance or other type of  
18 equipment is not believed to be part of the ignition  
19 scenario, 16.5.7.1 does not apply.

20 MR. WIGGINS: Okay.

21 Q. (Mr. Wiggins) And that's your answer and  
22 you stick by it.

23 MS. DALY: Objection.

24 THE WITNESS: Sir, from January  
25 30th, 2012 -- let me backtrack. January 26 and

1 January 27th I saw fire patterns that indicated to me  
2 the fire did not originate anywhere other than the  
3 floor below drive-through window number one. On  
4 January 30th Mr. Martini eliminated the multiple  
5 electrical components in the area of drive-through  
6 window number one.

7 Q. (Mr. Wiggins) That ---

8 A. --- Based on my observation of fire  
9 patterns, Mr. Mar -- Martini's exclusion of the  
10 electrical components, I determined the fire was not  
11 electrical in nature.

12 Q. Okay. If that determination had been  
13 erroneous, though, the elec -- the circuit boards  
14 should have been further investigated and looked at  
15 by a -- in a laboratory setting. Is that not true,  
16 Mr. Lacy?

17 MS. DALY: Objection to form.

18 THE WITNESS: I don't understand the  
19 question at all.

20 MR. WIGGINS: Okay.

21 Q. (Mr. Wiggins) I'm saying that if --  
22 you're saying that you made that determination, that  
23 Mr. Lacy made that -- that Mr. Martini made that  
24 observation. Is that correct?

25 MS. DALY: Objection to form.

1 THE WITNESS: I made what  
2 determination?

3 Q. (Mr. Wiggins) You made -- you -- based  
4 upon the statements to you from Mr. Martini that the  
5 circuit boards were not defective and did not --  
6 would -- could not have served as the ignition source  
7 for this fire, you then based your opinion on the  
8 area of origin of this fire as being the floor of the  
9 Miami Subs restaurant and not anyplace else.

10 A. No, sir.

11 MS. DALY: Objection.

12 Q. (Mr. Wiggins) That's not correct?

13 A. No, sir.

14 Q. What did you base it on then?

15 A. I based the identification of the area of  
16 origin on fire patterns on January 26 and 27th before  
17 Mr. Martini examined it. Then we had all this  
18 evidence, and I said look at it.

19 Q. What is the area of origin as you've  
20 identified it for this fire?

21 A. Underneath the window, underneath  
22 drive-through window number one, on the floor.

23 Q. Okay. How -- over what period -- over  
24 what surface of the floor?

25 MS. DALY: Objection to form.



1                   THE WITNESS: I'm not going to say  
2 right up against the wall underneath the window, but  
3 within one tile of the window, which is about four  
4 inches, extending probably to 18 to 24 inches away  
5 from the window.

6           Q.     (Mr. Wiggins) And I take it it's your  
7 testimony that you never considered even after  
8 learning that -- well, let me strike that.

9                   You never, until you completed your  
10 investigation, ever learned of the exact location of  
11 the circuit board. Is that correct?

12          A.     Correct.

13          Q.     And you only learned about that, I  
14 believe, after you read the depositions of Mr.  
15 Diamantopoulos.

16          A.     To be honest with you, I don't remember  
17 whose deposi -- whose -- we -- whose transcript it  
18 was I read.

19          Q.     Okay, but you read it somewhere.

20          A.     Yes, sir.

21          Q.     And my question, then, would have been had  
22 you known that this PCB, printed circuit board had  
23 been located right next to where Mrs. Moon has  
24 identified those styrofoam cups, those plastic cups,  
25 styrofoam plates, and the cellophane encasing those

1 items was located, would that have changed or had  
2 anything to do with your opinion about the ignition  
3 source for this fire.

4 MS. DALY: Objection to form.

5 THE WITNESS: No, sir.

6 Q. (Mr. Wiggins) And, again, that's based  
7 upon the opinion of Mr. Martini that the printed  
8 circuit boards were not defective.

9 A. No, sir.

10 Q. Okay. What -- straighten me out then.

11 A. The area of origin -- let me rephrase  
12 that. I identified the area of origin at floor level  
13 on the 27th, if not the 26th, but most definitely by  
14 the time I left the fire scene on January 27th, 2012,  
15 as at floor level underneath drive-through window  
16 number one. I based that on the damage to the  
17 wheeled aluminum cabinet. I based that on the damage  
18 to the wall underneath the drive-through window. And  
19 when I say wall I'm talking about the vert -- the  
20 vertical wall surface.

21 I based that on the presence of the fire  
22 pattern or -- I don't want to say the fire pattern --  
23 on fire patterns indicating that the fire originated  
24 below the area in which I subsequently learned the IQ  
25 Ion device was mounted. The fire originated below

1 that area, passed through that area vertically, and  
2 kept going to the ceiling.

3 I also observed a fire pattern spreading  
4 behind the wheeled aluminum cart going toward  
5 drive-through window number two.

6 Q. How do you explain that?

7 A. By the fire originating at the floor.  
8 That pattern is totally inconsistent with the fire  
9 originating at the IQ Ion device. The damage to the  
10 fiberglassed, reinforced panel that shows a protected  
11 pattern is totally inconsistent with the fire  
12 originating at the IQ Ion panel -- and I call it  
13 panel -- device or item. The damage to the wheeled  
14 aluminum cart is not consistent with the fire  
15 originating at the IQ Ion item.

16 Q. Going back for just a moment, what do you  
17 consider -- when we're talking about the area of  
18 origin, you say we are not talking about the point of  
19 origin. Is that correct?

20 MS. DALY: Objection.

21 Q. (Mr. Wiggins) Are we talking about two  
22 different things, Mr. Lacy?

23 A. It's -- in my mind the words are  
24 synonymous. There are a lot of people who will say a  
25 big circle can be an area, a small circle can be a

1 point. I -- I believe the fire originated at floor  
2 level underneath the window. If one wants to call  
3 that the area, so be it. If someone wants to call  
4 that the point, so be it.

5 When I think of a differ --  
6 differentiation between area of origin and point of  
7 origin, I am thinking that if I identified the area  
8 of origin as the back of the restaurant, the back  
9 half of the restaurant, behind the cash registers,  
10 more generalized than what I have testified to today  
11 -- but when I'm talking about an area that is 22  
12 inches wide and no more than 35 inches -- I'm sorry  
13 -- 22 inches deep and no more than 35 inches wide.

14 Q. Two by two by three?

15 A. Roughly, yeah. When -- when I'm talking  
16 about that area -- I'm going to be honest with you.  
17 You can call that an area of origin. You can call  
18 that a point of origin. You're not going to get any  
19 objection from me.

20 The fire did not originate up the wall.  
21 The fire originated on the floor. The fire spread  
22 vertically exactly like I would have expected that  
23 fire to spread. It spread horizontally exactly like  
24 that fire -- like I would have expected that fire to  
25 spread. It produced a protected pattern on the wall

1 where the IQ Ion device was located as the fire  
2 pattern passed through that area headed to the  
3 ceiling.

4 Q. I understand that's what you've testified  
5 to and that's what you've written in your reports.

6 Did you ever develop any kind of a  
7 hypothesis that the Ion IQ device could or might have  
8 been a heat source for ignition of this fire ---

9 MS. DALY: --- Objection.

10 Q. (Mr. Wiggins) --- Ignition -- initially  
11 ---

12 A. --- Maybe ---

13 Q. --- At this point?

14 MS. DALY: Objection to the form of  
15 the question.

16 THE WITNESS: Maybe for 90 seconds,  
17 until I looked on the morning of the 26th, or maybe  
18 the afternoon of the 26th. Let's just say on the  
19 26th -- briefly, until I saw that fire pattern and  
20 said, okay, it didn't originate up there.

21 Now, understand, on the 26th I didn't know  
22 about the IQ Ion.

23 MR. WIGGINS: I understand.

24 THE WITNESS: I didn't know what was  
25 on the wall. But I've got a black pattern -- let me

1 rephrase that. I've got a black protected area on  
2 the wall that is in the middle of a fire pattern  
3 originating at floor level, rising to the ceiling.  
4 And once it hits the ceiling it goes horizontal,  
5 exactly like the way I would have expected it to do.

6 Then I see the damage to the wheeled  
7 aluminum cart. Then I see the fire patterns going  
8 toward drive-through window number two.

9 On the afternoon of the 27th I realized  
10 that the grout from the tile -- when I got down there  
11 to take my sample, I realized that grout had taken a  
12 lot of heat, and it was structurally unstable. Now,  
13 I don't want to mean -- when I say unstable, I don't  
14 want to mean it's explosive. But it wasn't worth  
15 grout anymore. Two foot away the grout's fine. Two  
16 foot behind me is fine. Two foot to the left of me  
17 is fine.

18 Understand, I'm on my knees looking at the  
19 drive-through window, office wall to my right,  
20 wheeled cabinet to my left. And in this one area  
21 I've got grout that is substantially fire damaged.

22 MR. WIGGINS: Okay.

23 THE WITNESS: Had the combustible  
24 items on the metal shelf fallen to the floor during  
25 the fire, I wouldn't have had this kind of damage, or

1 I would have had damage that was three foot by six  
2 foot, not 22 inches by 35 inches. But right here  
3 I've got localized damage to the grout.

4 I've got a pattern to the wheeled aluminum  
5 cart right here. I've got a fire pattern on the wall  
6 below the drive-through window number one that starts  
7 two, three inches off the floor and goes the entire  
8 height of that room. It originates below and passes  
9 through.

10 And when I say it, I mean the fire pattern  
11 -- originates below and passes through the height of  
12 the IQ Ion device and goes on to the ceiling.

13 I look at the pattern on the wheeled  
14 aluminum cart. I look at the pattern on the wall  
15 going toward drive-through window number two. They  
16 are no way, underlined, **bold font**, **all caps**, no way  
17 consistent with a fire originating at IQ Ion.

18 Then on Monday I have Mr. Martini examine  
19 them. Other than knowing that I'm back here in the  
20 left rear corner near drive-through window number  
21 two, I don't tell him anything more. He look ---

22 MR. WIGGINS: --- Okay.

23 THE WITNESS: He looks at it and  
24 says it's not involved in the fire.

25 Somewhere along the way you asked me if I

1     should have called Mr. Cavaroc, Dr. -- yeah, John  
2     Cavaroc. I don't think so. I think Henry Martini is  
3     capable of examining the PC board, the wiring, and  
4     the fluorescent fixtures. And he and I have worked  
5     fires where he has told me you got a problem here,  
6     this caused the fire.

7                     We do work for both property adjusters and  
8     liability adjusters. If he tells me it did not cause  
9     the fire, I believe him. If he tells me it did cause  
10    the fire, I believe him. If he tells me he doesn't  
11    know, I believe him. If I didn't believe him on any  
12    one of those three items, I wouldn't use him.

13                    MR. WIGGINS: I understand.

14            Q.     (Mr. Wiggins) When you left the PCB on  
15    the shelf, as you've testified, did you tell Jimmy or  
16    anyone else that you were leaving them there for any  
17    purpose, you were leaving them in their custody?

18                    MS. DALY: Objection to the  
19    characterization that you say he left on the shelf.

20                    THE WITNESS: No, sir.

21            Q.     (Mr. Wiggins) When you went back there in  
22    November of 2012, they were gone, weren't they?

23            A.     As was a whole lot of stuff in that  
24    restaurant.

25            Q.     Okay.



1           A.     Not just PC boards and fluorescent light  
2 fixtures, tables, cash registers, steel, stainless  
3 steel tables, cooking appliances. It was all gone.

4           Q.     All missing. All missing.

5           A.     Gone.

6                     MS. DALY: Let's take a break.

7                     MR. WIGGINS: Sure.

8                     (3:21-3:29 p.m. - recess)

9                     MR. WIGGINS: Back on the record?

10                    THE WITNESS: Yes, sir.

11           Q.     (Mr. Wiggins) Mr. Lacy, I'm going to show  
12 you what has been marked for identification as the  
13 Plaintiff's Exhibit 46B and ask if you can flip  
14 through that and identify that.

15                     (Witness examined document)

16           A.     Yes, sir. These are the photographs, 119  
17 of them, that were attached to my report to Michael  
18 Jezierski dated May 21st, 2012.

19           Q.     And what was the purpose of this report to  
20 Michael Jezierski?

21           A.     It was requested by Scott Brown, and if he  
22 identified a purpose, I don't know. I have just done  
23 this work long enough to know at some point in time  
24 most of my clients want a -- want a report prepared  
25 to summarize my investigation.

1 Q. And you said, at your request, beginning  
2 on January the 26, 2012, the fire scene examination  
3 was conducted.

4 That's when you began your examination,  
5 was it not?

6 A. Yes, sir.

7 Q. And it really wasn't Mike Jezierski who  
8 did that. It was someone else.

9 Mike Austin, I believe you said?

10 A. Actually, Zak Gurley.

11 Q. Zak Gurley.

12 A. But in all honesty, sir, this is a -- this  
13 is template language. I don't type at your request  
14 beginning on January 26, 2012. That is pre-filled  
15 in.

16 So if your is Nationwide's, it's okay. If  
17 it's Mr. Jezierski -- no, you're right. It was  
18 actually Zak Gurley.

19 Q. Doesn't matter.

20 A. And at the end of the day, it does not  
21 matter to me.

22 Q. It doesn't matter. It doesn't matter to  
23 me, either.

24 A. Okay. Okay.

25 Q. Just thought it was kind of odd ---

1           A.     --- Well, I'll be honest with you, I  
2     didn't realize it till just now.

3           Q.     And then contained in this report is a  
4     background of your investigation, which is on the  
5     second page of this letter -- report.

6           A.     Yes, sir.

7           Q.     And then you talk about the statements  
8     given to you Sean Berry of Security Central about  
9     Jimmy going to the restaurant and entering the wrong  
10    access code and having to change -- get that changed.

11                   Do you recall that?

12           A.     Yes, sir.

13           Q.     And then you talk about your conversations  
14    with Zachary Scott Lapene, and said Mr. Lapene had  
15    heard certain things about payroll checks that were  
16    bouncing and the natural gas services being  
17    terminated recently.

18                   Do you recall that?

19           A.     Yes, sir.

20           Q.     And then the next page is Ms. Moon had  
21    said she paid in cash to other employees, and that  
22    they were currently owed two weeks salary.

23                   You talk about a dumpster was removed  
24    several months ago because Mr. Diamatopoulos not  
25    being paid the bill. And electrical service had been

1 in arrears for several months totalling \$3,000. Mrs.  
2 Brown's had a lot of trouble cashing payroll checks.

3 All of this was information that was not  
4 germane to your determination of the cause and origin  
5 of this fire, was it?

6 MS. DALY: Objection to form.

7 THE WITNESS: No, sir. They were  
8 statements that just came up during my interviews of  
9 these employees.

10 Q. (Mr. Wiggins) It had nothing to do with  
11 your cause and origin ---

12 A. --- I mean, it's not ---

13 MS. DALY: --- Objection to form.

14 THE WITNESS: It's not evidence of  
15 the origin and cause of the fire, no.

16 Q. (Mr. Wiggins) And you did not consider it  
17 to be such ---

18 A. --- No, sir.

19 Q. --- Did you?

20 A. No, sir.

21 MS. DALY: Objection to form.

22 Q. (Mr. Wiggins) And it would have been  
23 improper under 921 to make that determination?

24 MS. DALY: Objection to form.

25 Q. (Mr. Wiggins) That is, to make a

1 determination of cause and origin based upon hearsay  
2 statements from other persons about someone's  
3 financial ---

4 A. --- Correct.

5 Q. --- Condition.

6 A. As soon as you said financial, I -- I  
7 agree with you. I just wanted to hear what -- but  
8 no, you're right.

9 Q. Okay.

10 A. I'm looking at physical evidence, fire  
11 evidence.

12 Q. Exactly.

13 And in the next page you state that -- you  
14 go on to say some other examples of that same thing  
15 and the PWC matter.

16 And then you go on to talk about the  
17 Fayetteville Fire Department having been called and  
18 what they found.

19 And you said Firefighters Handford and  
20 Hagan saw ceiling tiles falling near the drive-thru  
21 window and were able to extinguish a fire burning on  
22 the floor near the drive-thru window with minimal  
23 water.

24 Jones stated that the owner arrived at the  
25 scene early in the fire.

1 Do you recall that?

2 A. Yes, sir.

3 Q. And that was part of the report that you  
4 made on the -- in May -- well, in May 21, 2012.

5 And then you said after the subsequent  
6 investigation and conversation with Mr. Martini,  
7 Royal identified the fire as incendiary in nature.

8 That was based upon his conversation with  
9 you that Mr. Martini had ruled out all electrical  
10 sources and appliances as a source of this -- as an  
11 incendiary source of this fire? Is that correct?

12 MS. DALY: Objection to form.

13 THE WITNESS: Ruled out all ---

14 MR. WIGGINS: --- Electrical ---

15 THE WITNESS: --- As an incendiary  
16 source?

17 THE WIGGINS: At -- well, all -- I'm  
18 sorry.

19 All electrical appliances and/or equipment  
20 that could have been a cause of this fire.

21 THE WITNESS: Mr. Martini did  
22 eliminate all of that, yes.

23 Q. (Mr. Wiggins) He told that -- you then  
24 told that to Special Agent Royal, did you not?

25 A. To be honest with you, I don't know if I

1 told him or if Special Agent Mart -- I mean, if Mr.  
2 Martini -- or if all three of us were standing there  
3 and had a conversation -- either Martini or Lacy  
4 related to Royal.

5 Q. And based upon that, you're now aware that  
6 Agent Royal then changed his classification of this  
7 fire from undetermined to incendiary?

8 A. Yes, sir.

9 Q. And you go on to say that -- stated the  
10 fire scene -- you talk about the fire scene  
11 examination was conducted, utilizing recognized and  
12 accepted procedures and practice for fire  
13 investigation as outlined in 2011 edition of NFPA.  
14 We talked about that.

15 And I -- I've shown you some of the guides  
16 for fire and explosion investigation from 921, have I  
17 not?

18 A. Yes, sir.

19 Q. And we've talked about that.

20 A. Yes, sir.

21 Q. And then you talk about the study that you  
22 made, and that -- on the next page, that is, page  
23 five -- you talk about alterations did not impact --  
24 that is, Royal's rearrangement of the fire scene did  
25 not impact your investigation.

1                   And that would be a true statement, would  
2   it not?

3           A.     Hang on a minute.

4           Q.     You see where I'm talking about?

5           A.     All right, now, I'm looking at page eight.

6           Q.     I'm sorry, page eight. I'm sorry.

7           A.     Okay. No, I just wanted to be with you  
8   all -- you said page five.

9           Q.     I'm sorry.

10          A.     Yeah, page eight, third paragraph. The  
11   alterations did not impact my ability to form an  
12   opinion as to the origin and cause of the fire.

13          Q.     Correct. And then you say in the last  
14   paragraph, the right -- the rear drive-thru window  
15   was not in active use, thus no electrical appliances  
16   were located in that area. No electrical, mechanical  
17   or otherwise heat-producing equipment was located in  
18   that area.

19                 You now know, you did not know then, that  
20   there was electrical equipment that -- that there was  
21   heat-producing equipment in that area?

22          A.     Yes, sir.

23          Q.     And you then say Special Agent Royal moved  
24   a lot of the debris from that area near the rear  
25   drive-thru window. Examination of debris, again,



1 revealed no evidence of value.

2 And although you then knew that he had  
3 removed the circuit board from that area, you  
4 determined that that did not reveal any evidence of  
5 value?

6 A. The -- I mentioned to you earlier today,  
7 he moved the debris from in front of the drive-thru  
8 window to over almost in front of the wheeled  
9 aluminum cart. I went through the debris on the  
10 floor.

11 Q. You never saw it ---

12 MS. DALY: --- Let him finish  
13 answering his question.

14 THE WITNESS: I went through ---

15 MS. DALY: --- The first question.

16 THE WITNESS: --- The debris on the  
17 floor. There was no -- there was nothing of any  
18 value remaining in the debris on the floor.

19 The printed circuit boards had already  
20 been moved to the table.

21 Q. (Mr. Wiggins) As you first saw it?

22 A. Yeah, as we discussed.

23 Q. Okay.

24 A. But there was nothing left on the floor of  
25 any value.

1 Q. And that's what you meant by this  
2 statement?

3 A. Yes, sir.

4 Q. And then you say examination of the area  
5 under the rear drive-thru window revealed no evidence  
6 of an ignition source.

7 That was a statement that you also made?

8 A. Correct.

9 Q. And you made that statement not knowing at  
10 the time that the printed circuit board was located  
11 in the area where you subsequently learned that it  
12 was placed?

13 MS. DALY: Objection to the form of  
14 the question.

15 THE WITNESS: Correct.

16 Q. (Mr. Wiggins) And then in the last page,  
17 page 10, the ignition source of the fire is an  
18 unidentified open flame device that is based on the  
19 following facts.

20 Exclusion of electrical, mechanical and  
21 otherwise heat-producing equipment in the area of the  
22 origin of the fire.

23 And number two, an open-flame device is  
24 the only competent ignition source available to  
25 complete the ignition sequence for this fire.

1                   That was your conclusions, I take it, Mr.  
2 Lacy?

3           A.     Yes, sir.

4           Q.     And let me ask you about that.

5                   The ignition source is unknown. The open  
6 -- you say an open flame, but you don't know what the  
7 ignition source was when you say an open flame, do  
8 you?

9                   MS. DALY: Objection to form.

10                   THE WITNESS: I am -- when I say an  
11 unidentified open flame device, I am referring to the  
12 flame from a cigarette lighter, the flame from a  
13 struck match, the flame from an appliance that we  
14 could use to light a charcoal grill. I'm talking  
15 about the flame produced by a lit plumber's torch.  
16 An open flame.

17           Q.     (Mr. Wiggins) Did you find any evidence  
18 of any of those devices at the scene?

19           A.     No, sir.

20           Q.     And you made the determination of an open  
21 source fire without finding any such device at the  
22 scene?

23           A.     Correct.

24           Q.     And then you say an open flame device is  
25 the only competent ignition source available.

1                   And that means that you had excluded at  
2   that point any known electrical devices in the area,  
3   including all of the things we've talked about here  
4   today. The fluorescent light -- lights in the  
5   restaurant, the printed circuit board, the electrical  
6   outlets in that area, all of those things had been  
7   eliminated by Mr. Martini?

8           A.    Yes, sir.

9           Q.    And that's what you base your decision  
10   upon. Is that correct?

11          A.    Yes, sir.

12          Q.    And would this have been based upon what  
13   is known as the process of elimination of causes of  
14   fires?

15                   MS. DALY:  Objection to form.

16                   THE WITNESS:  A portion of it is,  
17   yes.

18          Q.    (Mr. Wiggins)  Okay, and is that also  
19   known as the negative corpus theory?

20          A.    Negative corpus and process of elimination  
21   are two different things.

22          Q.    Okay, tell me about that.

23          A.    Negative corpus is -- the best example --  
24   well, an example of negative corpus is you have a  
25   vacant house that no one's living in. There's no

1     electrical service, and it has no gas service, no  
2     fuel oil service and it catches on fire. And an  
3     investigator says it has to be intentionally set.

4             He doesn't know where it originated, other  
5     than within the four exterior walls, above the floor  
6     and below the ceiling. But because there's no  
7     electrical, no mechanical, none of this, none of  
8     that, it's got to be incendiary.

9             Process of elimination where you have a  
10    well-defined area of origin, and in my mind, at 22  
11    inches deep and 35 inches wide, at floor level, I  
12    have a well-defined area of origin. I don't have --  
13    I don't have a competent ignition source within that  
14    well-defined area of origin.

15            Beyond that evidence, I have the movement  
16    of a wheeled aluminum storage rack from near the --  
17    what we've been calling drive-thru window number two.  
18    I don't say it in here, but the conversation you and  
19    I have had, moving it from drive-thru window number  
20    two near -- closer to drive-thru window number one --  
21    after four a.m. on January 24th and before  
22    approximately 8:40 a.m. on January 24th.

23            Q.     How do you know it was not moved by fire  
24    fighters who had entered the restaurant?

25            A.     Because the fire patterns on the side tell

1 me that it was in the location that I first observed  
2 it in at the time of the fire.

3 Q. And you can ---

4 A. --- May I continue with ---

5 Q. --- Oh, I'm sorry.

6 A. --- With my answer?

7 Q. I'm sorry. Go ahead.

8 A. I also have evidence that Mr. -- or Jimmy,  
9 Mr. D., however you want to -- whatever you want to  
10 call him, the owner -- entered the restaurant at  
11 8:15, received a phone call from the alarm company at  
12 8:17, and depending upon what sequence of events you  
13 utilize, left the restaurant between 8:25 and 8:35.

14 We have a fire reported at 8:41. I  
15 observed flames venting out the window of drive -- of  
16 drive-thru -- out of the glass of the window of  
17 drive-thru number one at 8:43. We have Mr. -- we  
18 have Jimmy passing in front of Walmart and we've got  
19 firefighter -- at 8:45 -- and we got fire fighters  
20 arriving at 8:46.

21 Utilizing all of that evidence as part of  
22 process of elimination, and 921 allows it, I  
23 determined the fire is incendiary.

24 Q. You talk about 941. Are you talking  
25 941.18?

1 A. I'm talking about 841, not 940 ---

2 Q. --- 921.

3 A. Oh, 921.

4 Q. 921, 86.5. Is that what you're talking  
5 about?

6 A. 8.6.5?

7 Q. 18.6.5.

8 A. Uh-huh. Okay, 18, yes, sir.

9 Q. And this talks about the inappropriate use  
10 of the process of elimination.

11 Do you see that?

12 A. Yes, sir.

13 Q. And that's what you emphasized in your  
14 response in your expert report made in 2013, June of  
15 2013?

16 A. Yes, sir.

17 Q. And you say that ---

18 A. --- Excuse me. Oh, expert -- yes, sir.  
19 Yes, sir.

20 Q. And this says the process of determining  
21 the ignition source for a fire by eliminating all  
22 ignition sources known -- found, known or believed to  
23 have been present in the area of origin, and then  
24 claiming such methodology is proof of an ignition  
25 source for which there is no evidence of its

1 existence, is referred to by some investigators as  
2 negative corpus.

3 Negative corpus has typically been used in  
4 classifying fires as incendiary, although the process  
5 has also been used to characterize fires --  
6 classified as accidental.

7 This process is not consistent with a  
8 scientific method, is inappropriate, and should not  
9 be used because it generates an un-testable  
10 hypotheses and may result in incorrect determinations  
11 of the ignition source and first fuel ignited.

12 Any hypothesis formulated by the casual  
13 factors -- that is fuels -- first fuel, ignition  
14 source, ignition sequence, must be based on facts.  
15 These facts are derived from evidence, observations,  
16 calculations, experiments, and the law of science.  
17 Speculative information cannot be included in the  
18 analysis.

19 Do you agree with that statement there?  
20 Is that what you -- do you adhere to that?

21 A. Okay, beginning with the process of  
22 determining the ignition source and going through the  
23 phrase first fuel ignited, that deals with negative  
24 corpus.

25 Q. Okay.



1           A.     Beginning at any hypothesis formulated for  
2     the causal factors must be based on facts, that is  
3     process of elimination.

4                     Process of elimination is allowed,  
5     negative corpus is not.

6           Q.     Okay.

7           A.     There is a difference between the two.

8           Q.     Some investigators use it synonymously, do  
9     they not?

10                    MS. DALY:   Objection.

11           Q.     (Mr. Wiggins)   You know that, don't you,  
12     Mr. Lacy?

13                    MS. DALY:   Objection.

14           Q.     (Mr. Wiggins)   That some use it  
15     interchangeably.

16           A.     Yes.

17           Q.     And it's often used interchangeably by  
18     fire investigators?

19           A.     Incorrectly.

20           Q.     Incorrectly.   But you make a  
21     differentiation between the two.

22           A.     Yes, sir.

23           Q.     And this section prohibits, as you've  
24     suggested, a negative corpus theory for developing  
25     the period for the -- for the fire -- or the cause

1 and origin of a fire.

2 A. Yes, sir.

3 Q. And it does not, in your cal -- in your  
4 estimation, prevent process of elimination?

5 A. Correct.

6 Q. And what do we mean by -- what do you mean  
7 by process of elimination?

8 A. In -- in all honesty, sir, it's probably  
9 not the best title, but it's what the industry has  
10 established.

11 When an investigator looks at a vacant  
12 house fire that does not have electrical service and  
13 says incendiary, that's negative corpus. He's not  
14 examined the electrical components.

15 When an investigator or an engineer does  
16 in fact examine electrical components and has a  
17 well-defined area of origin and has facts that  
18 support an incendiary fire, all of which supported an  
19 incendiary fire -- not just one of those items -- all  
20 of which support an incendiary fire, you may -- I  
21 mean, that's process of elimination. You've got to  
22 start with a well-defined area of origin.

23 If I did not have information that the  
24 wheeled aluminum cart had been moved, if I did not  
25 have information that Jimmy had left the restaurant

1 immediately -- well, not immediately, but in the  
2 minutes preceding the fire -- discovery of the fire  
3 -- I may have done something different.

4 But the bottom line, sir, is that evidence  
5 -- evidence was presented to me by a -- with a  
6 competent source, independent source, and I felt and  
7 still feel to this day that it -- it supported an  
8 incendiary fire cause.

9 Q. We've established that you did not know  
10 what the ignition source of this fire was beyond  
11 speculation.

12 MS. DALY: Objection.  
13 Mischaracterization of his testimony.

14 Q. (Mr. Wiggins) You said open flame.  
15 You don't know what kind of an open flame  
16 it was.

17 A. No, sir.

18 Q. And you do not know -- what was the first  
19 fuel ignited in this fire?

20 A. Probably the shrink wrap, or plastic  
21 wrapping around the cellophane -- cellophane --  
22 around the urethane products.

23 Q. Okay, and the only evidence you have with  
24 their location is on or about the top shelf as given  
25 to you by Mrs. Moon?

1 MS. DALY: Objection to form.

2 THE WITNESS: Mrs. Moon never said  
3 top shelf. She just said they were stored on that  
4 shelving.

5 Q. (Mr. Wiggins) Do you have any evidence or  
6 did you develop any evidence that there were in any  
7 other place at any time during ---

8 A. --- It would have ---

9 Q. --- The investigation.

10 A. It would have been awfully easy to move  
11 them from a top shelf to the floor.

12 Q. I know it would have been easy to have  
13 moved them, Mr. Lacy, but I'm asking you do you have  
14 any evidence that it was moved.

15 A. No, sir.

16 Q. And then 18 -- look at 18.6.5.1, and it  
17 says cause undetermined.

18 In the circumstance where all hypothesized  
19 fire causes have been eliminated -- and that's where  
20 we talked about, process of elimination ---

21 A. --- Okay.

22 Q. --- And the investigator is left with no  
23 hypothesis that is -- that is evidenced by the facts  
24 of his investigation, the only choice for the  
25 investigator is to opine that the fire cause, or

1 specific casual factors -- causal factors, remains  
2 undetermined. It is improper to base hypotheses on  
3 the absence of any supporting evidence.

4 Do you agree with that statement?

5 A. Yes, sir.

6 Q. That is, it is improper to opine a  
7 specific ignition source that has no evidence to  
8 support it even though all other hypothesized sources  
9 were eliminated.

10 Do you agree with that statement?

11 A. I agree with the statement as its  
12 contained in 921. It's not applicable to this  
13 investigation.

14 Q. Okay, why is not applicable to this  
15 investigation?

16 A. Go back up to the first sentence of  
17 18.6.5.1.

18 In the circumstances where all  
19 hypothesized fire causes have been eliminated and the  
20 investigator is left with no hypothesis that is  
21 evidenced by the facts of the investigation.

22 Q. Okay.

23 A. I've got evidence, facts of investigation,  
24 that indicate the fire is incendiary and not  
25 accidental, not undetermined, not natural. Four fire

1 causes. Incendiary, accidental, undetermined,  
2 natural.

3 I've got facts of the investigation that  
4 indicate the fire is incendiary.

5 Q. Is not what you're saying, Mr. Lacy,  
6 trying to prove a negative?

7 That is, a lay investigator could say I'm  
8 going to rule out everything else except incendiary,  
9 call the fire incendiary, and say prove me wrong?

10 A. No, sir.

11 Q. That couldn't happen?

12 A. Not in this case. I'm not going to say it  
13 can't happen. I'm saying it's not happening in this  
14 case.

15 Q. I understand you're saying it's not  
16 happening in this case.

17 But I'm just saying that when you use the  
18 process of elimination or a negative corpus, whatever  
19 you want to call it, you're winding up by saying, you  
20 know, we can't determine the cause of this fire, so  
21 therefore, we're saying it's incendiary, prove me  
22 wrong.

23 Doesn't that happen?

24 MS. DALY: Objection.

25 THE WITNESS: I don't know. It

1        didn't happen here. That is not the case here, sir.

2            Q.        (Mr. Wiggins) And you're saying the fact  
3        that you're relying upon is the timing factor of  
4        Jimmy being in the restaurant, the timing factor of  
5        flames being seen in and near the restaurant at 8:41  
6        a.m., and the fact that the cart was moved from a  
7        point where Mrs. Moon said it was, at or near  
8        drive-thru window number two, nearer to drive-in  
9        window number one.

10                    Is that what you're saying?

11            A.        Yes, sir.

12            Q.        What is the significance, Mr. Lacy, of  
13        having moved -- or the cart being moved from window  
14        number one down near window number two?

15            A.        To obstruct the visibility of -- of the  
16        fire from the exterior of the restaurant.

17                    The wind -- when you moved the cart where  
18        it was moved, it obstructed, or blocked may be a  
19        better word, vision through drive-in window number  
20        two.

21                    And if you stood on McPherson Church Road  
22        or in the front of the restaurant in a straight line  
23        from drive-in window number one to McPherson Church  
24        Road, it -- it blocked that vision. Fire could be  
25        set on the floor.

1                   Remember the side of the cart is damaged,  
2 not the front. So it's set underneath the window,  
3 but the window is partially blocked by the wheeled  
4 aluminum cart, the window being that of drive-in  
5 window number one.

6                   And then -- and I went in the restaurant  
7 and stood -- and when I draw a -- basically a  
8 diagonal line from the left rear toward the right  
9 front, when I get in that diagonal line, I can't see  
10 the origin of the fire because of the cart.

11                   If the cart is moved back up to where it  
12 is closer to drive-in window number two, you could  
13 see the area of origin.

14               Q.    Is it your testimony you could have seen  
15 into the -- into the window from McPherson Church  
16 Road back to the location of this window number one  
17 in the daytime and have seen someone in the  
18 restaurant?

19                   Is that what you're saying?

20               A.    Well, the way I -- I didn't go outside and  
21 look through.

22               Q.    Okay.

23               A.    I -- where I -- I stood in the restaurant  
24 and realized, even in the restaurant, you couldn't  
25 see the origin on the floor underneath drive-in



1     number -- drive-thru window number one.

2             Q.     Okay.

3             A.     So if you can't ---

4             Q.     --- Going back ---

5             A.     --- If you can't see it from inside the  
6     restaurant, you're not going to be able to see it  
7     from outside.

8             Q.     So your theory is that it would have been  
9     -- have blocked and provided refuge for someone  
10    trying to set a fire in the restaurant?

11            A.     First, I agree with the first part of your  
12    statement. I don't agree with the second part.

13                    I agree that it was moved to block the  
14    visibility, not so much of a person but of  
15    development of the fire.

16            Q.     Okay.

17            A.     Development and spread of the fire.

18            Q.     Did it ever -- did you ever wonder or  
19    think about the fact that this fire occurred in or  
20    about 20 minutes till nine o'clock in the morning at  
21    the intersection of McPherson Church Road, Skibo  
22    Road, which had traffic on those two roads, which  
23    were the busiest of the day -- and those are the two  
24    busiest roads in Fayetteville -- why someone would  
25    set fire to a restaurant at that time of the day

1     rather than in the middle of the night?

2                     MS. DALY:   Objection to form.

3                     THE WITNESS:   I've -- I've been  
4     investigating fires approximately 35 years, and I  
5     have been involved with the pro -- profiling of fire  
6     setters.   And one of the things that I learned  
7     through that is, yes, there are some distinct  
8     characteristics that you can profile.   But there's  
9     always kind of that wild hair that happens and you  
10    can't explain it.

11                    But in answer -- to answer your question,  
12    it is an odd time of day.   Other than what I observed  
13    on January 26 and 27 and January 30 -- I mean, I  
14    don't know that that's the busiest intersection in  
15    Fayetteville, but it is a -- two busy roads.

16                    MR. WIGGINS:   And ---

17                    THE WITNESS:   --- But let me add  
18    this, and this -- this came to my mind.   I'm not  
19    trying to cut you off.   It just popped in my mind.

20                    That is more justification for moving  
21    something to block vision because you've got two busy  
22    roads.

23                    If you -- if you've got two country roads  
24    and you're not worried about somebody driving down  
25    there or sitting at intersections waiting for lights

1 to turn green, you don't need to move a cart to block  
2 it. But if you do have that, you do need to move a  
3 cart to block it

4 Q. (Mr. Wiggins) Did you find, Mr. Lacy, any  
5 incendiary fire indicators in this restaurant when  
6 you did your investigation?

7 MS. DALY: Objection to form.

8 THE WITNESS: Well, certainly the  
9 owner leaving the property in a period of a few  
10 minutes before discovery of the fire is an indicator  
11 of an incendiary fire.

12 The movement -- and typically textbooks  
13 say structural component, but the movement of the  
14 wheeled aluminum cart would be an indicator of an  
15 incendiary fire. Those are the two that I considered  
16 in my investigation towards -- that resulted in the  
17 identification of an incendiary fire.

18 There are multiple other indicators of an  
19 incendiary fire that I did not use in hypothesizing  
20 that the fire was incendiary. But those are the two  
21 that I used.

22 Q. (Mr. Wiggins) That comes to your mind  
23 now?

24 A. Yes. Well, it came to my mind in January.  
25 Not now, but in January.

1 Q. Did you ever know how many -- or did you  
2 determine from Mrs. Moon or from Jimmy the number of  
3 these styrofoam shelves, plastic cups, and -- and  
4 plates were on that -- on those shelves -- on that  
5 drying shelf?

6 A. Okay, please re -- please restate the  
7 question.

8 Q. Did you ever determine from Mrs. Moon or  
9 from Jimmy, or any other source, for that matter, the  
10 number of styrofoam plates, the number of plastic  
11 cups and/or plates and/or plastic utensils that were  
12 on that drying shelf?

13 A. No, sir.

14 Q. Let me just show you very quickly -- I'm  
15 not going to spend much time with this, and we'll be  
16 through pretty quickly here -- what I will call  
17 Exhibit Number 124, and ask you if you can identify  
18 this document.

19 (\* Exhibit 124 was marked \*)

20 (Witness examined document)

21 A. Yes, sir. This is my report dated June  
22 28, 2013.

23 Q. And did you attach photographs to this  
24 report to Ms. Daly, dated June 28, 2013?

25 A. Not -- I didn't do a photo log like I did

1 with the May 2012 report.

2 What I did is refer to photo numbers in  
3 opinions three and six. And those -- these photo  
4 numbers are on the CDs that you received this  
5 morning, and I think they're under a file labeled  
6 Lacy Photo report two -- I mean, Lacy report two,  
7 number two, photos.

8 Q. Okay.

9 A. And all of these digital images that you  
10 see, like on page five and on page four, you see  
11 where I've listed digital images?

12 Q. Okay. Yeah.

13 A. They're in a specific folder on one of  
14 those CDs that you were given this morning.

15 Q. Okay.

16 A. I did not do a separate photo log.

17 Many of these same photos are in my May  
18 2012 report, but they're detailed here.

19 And there are two additional photos under  
20 item number 15 -- opinion 15 on page seven.

21 Q. Did you include a copy -- a photo of the  
22 circuit board that was located by you or Mr. Martini  
23 on the shelf that you said -- where it was placed?

24 A. No, sir, because Mr. Martini included a  
25 photograph of that in his May 2012 report, so I

1     didn't go back and duplicate it.

2           Q.     Is essentially the only difference between  
3     this report to Mrs. Daly, which is, again, dated June  
4     28, 2013, and the one dated May 2012, is the  
5     inclusion of the information concerning the base  
6     station -- Ion IQ base station for the restaurant  
7     drive-thru communication system?

8                     MS. DALY:   Objection to form.

9                     THE WITNESS:   Okay.   All right,  
10    pages one, two and three and the top paragraph on  
11    page four are somewhat identical to my May 2012  
12    report.   I don't identify opinions as -- in the May  
13    2012 report as I do in this report.

14           Q.     (Mr. Wiggins)   This is more extensive?   Is  
15    that what you're saying?

16           A.     Yes.   And then, beginning on page eight it  
17    talks about information reviewed and considered, and  
18    interviews conducted, depositions reviewed, previous  
19    depositions.   Then compensation, qualifications,  
20    exhibits, all of that -- I mean, none of that is  
21    included in the May 2012 report but is included in  
22    this report.

23           Q.     And on paragraph 15 -- you see that?

24           A.     I'm flipping back there.   One second.

25                     (Witness examined document)

1 A. Yes, sir.

2 Q. And it says any video recording equipment  
3 on a shelf in the office was still in that location  
4 on January 30th, 2012.

5 That was not in your original report, was  
6 it? That's added to this report?

7 A. Yes, sir.

8 Q. And that's because you became aware of  
9 that existence during -- between the time you  
10 completed your investigation and the time you wrote  
11 this report?

12 A. Well, item number ---

13 MS. DALY: --- Objection to the  
14 form.

15 THE WITNESS: Item number 15 is in  
16 there because I read in Mr. -- I mean, in Jimmy's --  
17 in one of the transcripts -- but right now, off the  
18 top of my head, I don't remember if it was EUO or  
19 deposition -- that he saw me remove it from the  
20 building on January 26, and I didn't.

21 Q. (Mr. Wiggins) But that's -- what I'm  
22 saying, that's new.

23 A. Yes, sir.

24 Q. And then -- and then I see that you had  
25 added the information about the Ion IQ in this report

1 in some detail which was not mentioned in the earlier  
2 report.

3 A. Correct.

4 Q. Other than that, the reports that you  
5 filed are essentially the same and you had made the  
6 same arguments about the cause and origin of the fire  
7 supported in this report as you did the first report?

8 A. Yes, sir.

9 Q. One more thing I want to talk about ---

10 A. --- Okay, that's fine.

11 Q. --- And we'll be finished up here.

12 I show you what I'm going to mark as --  
13 and I only have one of these, so I'm going to have to  
14 -- this has already been introduced as an exhibit --  
15 it's Langham & Associates report -- expert -- federal  
16 report to Mr. Lacy.

17 Have you he read that report?

18 A. Who authored it?

19 Q. The author of this was Steven Booth.

20 A. Yes, sir.

21 Q. Let me show it to you, and I have not --  
22 I'm sorry.

23 A. That's all right.

24 Q. Have not put the attachments to that  
25 because the only thing basically it was was the Ion



1 -- all the information about the Ion IQ system.

2 A. Okay.

3 Q. And very quickly, look at page one of this  
4 report, in summary of cause and origin, did you read  
5 that?

6 A. Okay, I'm looking at that. I'm seeing  
7 that as numbered page two.

8 Q. Page two is correct.

9 A. Okay.

10 Q. And ---

11 A. --- I see the paragraph.

12 Q. Right. Summary of cause and origin, and  
13 the -- would you read that paragraph and see whether  
14 you disagree or agree with that.

15 A. You want me to read it out loud?

16 Q. No, you can just read it to yourself.

17 (Witness examined document)

18 A. Okay, I've read it.

19 Q. Do you agree or disagree with anything  
20 that Mr. Lacy has stated in that paragraph?

21 MS. DALY: Objection to the form.

22 THE WITNESS: I don't believe Mr.  
23 Lacy stated anything in the ---

24 MR. WIGGINS: --- I'm sorry.

25 THE WITNESS: --- Paragraph.

1 MR. WIGGINS: I'm sorry. It's  
2 getting late in the afternoon. Excuse me.

3 THE WITNESS: It's all right.

4 MR. WIGGINS: Mr. Booth....

5 MS. DALY: Do you want him to go  
6 sentence by sentence and tell you whether or not he  
7 agrees or disagrees?

8 MR. WIGGINS: Well, if -- if he can  
9 just tell me whatever it is he can testify ---

10 THE WITNESS: --- Mr. Booth opines  
11 that the cause would be undetermined. I opined that  
12 the cause would be incendiary.

13 Q. (Mr. Wiggins) And that's two different  
14 things, and he ---

15 A. --- Well, I mean, that's the lump sum. In  
16 other words ---

17 Q. --- That's the bottom line?

18 A. Yeah. I mean, there's one or two things  
19 in the middle that I may not agree with, but it all  
20 leads to he's undetermined, I'm incendiary.

21 Q. And the point of all of this, Mr. Lacy, is  
22 that reasonable minds will reach different  
23 conclusions. Is that not correct?

24 MS. DALY: Objection.

25 THE WITNESS: After reviewing Mr.

1 Booth's deposition -- and I think he was deposed last  
2 Friday, and I -- and I looked at his deposition on --  
3 his transcript on Monday.

4 I don't know if Mr. Booth knew everything  
5 on May 30th that he knew on August 16th, two and half  
6 months in there, so I'm -- I'm not going to say that  
7 two reasonably minded individuals can reach separate  
8 opinions. Where I'm going to be -- go more specific  
9 is a person who knows less information than another  
10 might read -- might reach a different opinion.

11 Q. (Mr. Wiggins) He's basing his conclusions  
12 on the fact that he did not have an opportunity, nor  
13 did any investigator on behalf of the property -- the  
14 -- Jimmy Diamatopoulos, to examine the Ion IQ system.

15 A. Okay.

16 Q. And therefore, he cannot rule that out as  
17 a possible source.

18 Do you understand that?

19 A. Yes, sir. But I believe in his transcript  
20 from last Friday's deposition, he does talk about two  
21 possible hypotheses, one of which is incendiary, one  
22 of which is accidental involving the IQ Ion.

23 And as the time frame between Mr. --  
24 between Jimmy's departure from the building lessens  
25 with the discovery of the fire, it is a greater

1     likelihood that Mr. -- that Jimmy set the fire or was  
2     in the building when the fire was set as opposed to  
3     the fire being accidental.

4                     He doesn't say anything in here about  
5     that, because I don't know that Steve knew all of the  
6     time frame information on May 30th that he knew on  
7     July 16th.

8             Q.     But assume that he did know the time frame  
9     information, Mr. Lacy, at the time that he gave his  
10    deposition, there would still be a difference between  
11    his opinion and your opinion, would there not?

12            A.     Yes.

13            Q.     And I know, as you have seen from his  
14    deposition, that Mr. -- that Mr. Booth respects your  
15    opinion, and likewise, I take it, you respect his  
16    opinion?

17                     MS. DALY:  Objection to the form.

18                     THE WITNESS:  Yes.

19            Q.     (Mr. Wiggins)  Is there any other factors  
20    other than -- any other factors, Mr. Lacy, other than  
21    what we've discussed in your report, that you're  
22    going to testify to upon the trial on this matter to  
23    the jury that influenced your opinion that this fire  
24    was incendiary in nature?

25            A.     That's not listed in this report?

1           Q.    Not -- right, that's not listed in that  
2   report.

3           A.    No, sir.

4                   MS. DALY:  Objection to form.

5                   MR. WIGGINS:  I think that's all I  
6   have.

7                   MS. DALY:  Thank you.

8                   I don't have any questions.

9                   THE WITNESS:  Did you say you do or  
10   don't?

11                   MS. DALY:  I don't.

12                   THE WITNESS:  Okay.

13                   MR. WIGGINS:  I think I'm tired.

14                   WHEREUPON,

15                   at 4:19 o'clock p.m. the deposition was adjourned.

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## 1 CERTIFICATE OF TRANSCRIPT

2 I, Cassandra J. Stiles, Notary Public in  
3 and for the County of Forsyth, State of North  
4 Carolina at Large, do hereby certify that there  
5 appeared before me the foregoing witness;

6 That the testimony was duly recorded by  
7 me, reduced to typewriting by me or under my  
8 supervision and the foregoing consecutively numbered  
9 pages are a complete and accurate record of the  
10 testimony given at said time by said witness;

11 That the undersigned is not of kin nor  
12 associated with any of the parties to said cause of  
13 action, nor any counsel thereto, and that I am not  
14 interested in the event(s) thereof.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand this the 31st day of August, 2013.

17 Cassandra J. Stiles, CVR  
18 Certified Court Reporter  
19 Atlantic Professional Reporters  
20 Post Office Box 11672  
21 Winston-Salem, NC 27116-1672  
22  
23  
24  
25

## 1 CERTIFICATE OF OATH

2 I, Cassandra J. Stiles, Notary Public in  
3 and for the County of Forsyth, State of North  
4 Carolina at Large, do hereby certify that there  
5 appeared before me the foregoing witness;

6 That the witness personally appeared  
7 before me at the date, time and location hereon  
8 captioned and was personally sworn by me prior to the  
9 commencement of the proceeding in the matter hereon  
10 captioned.

11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand this the 31st day of August, 2013.

13 Cassandra J. Stiles, CVR  
14 Certified Court Reporter  
15 Atlantic Professional Reporters  
16 Post Office Box 11672  
17 Winston-Salem, NC 27116-1672  
18  
19  
20  
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25

## WITNESS CERTIFICATION

I, HUNTER B. LACY, CFI, hereby certify:

That I have read and examined the contents of the foregoing testimony as given by me at the time and place hereon indicated, and;

That to the best of my knowledge and belief, the foregoing pages are a complete and accurate record of all the testimony given by me at said time, except as noted on the Attachment A hereto.

I have \_\_\_\_ have not \_\_\_\_

made changes/corrections \_\_\_\_\_

Hunter B. Lacy, CFI

I, \_\_\_\_\_, Notary Public for the County of \_\_\_\_\_, State of \_\_\_\_\_, hereby certify:

That the herein-above named appeared before me this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and;

That I personally witnessed the execution of this document for the intents and purposes as herein-above described.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(SEAL)



## 1 ADDENDUM A

2 Upon reading and examining my testimony as  
3 herein transcribed, I make the following additions,  
4 changes and/or corrections, with the accompanying and  
5 corresponding reason(s) for the same:

6

7 Page Line Is Amended to Read

8 \_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_

9 \_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_

10 \_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_

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21

22

23 \_\_\_\_\_  
Stephen Edward Stone

24

25

## 1 CERTIFICATE OF MAILING

2 I, Cassandra J. Stiles, CVR, do hereby certify  
3 that a true copy of the transcription of the matter  
4 hereon captioned was served on the party named below  
5 by the placement of said transcript copy in the  
6 United States Mail, Priority Mail delivery, with  
7 proper postage affixed, addressed as follows:

8  
9  
10 Hunter B. Lacy, CFI  
11 c/o Gemma L. Saluta, Esq.  
12 One West Fourth Street  
13 Winston-Salem, NC 27101  
14  
15

16 This the 3rd day of September, 2013.  
17  
18

19 \_\_\_\_\_  
20 Cassandra J. Stiles, CVR  
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25